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University of California
Berkeley, California

Thomas J. Graff

CALIFORNIA REGIONAL DIRECTOR OF THE ENVIRONMENTAL DEFENSE FUND, 1971-2009:

APPLYING ECONOMICS TO ENVIRONMENTAL POLICYMAKING,

REFORMING CALIFORNIA WATER POLICY

Interviews conducted by
Ann Lage
in 2009

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Thomas J. Graff
ca. 2007

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Interview History—Thomas J. Graff

The oral history of Thomas J. Graff documents his long career with the Environmental Defense Fund and his role in influencing California and national energy and water policy for nearly four decades. He was one of three young men, two attorneys and a fishery biologist, who opened the first office of EDF in the West in 1971. An easterner with a Harvard law degree, he was new to California and had virtually no connection to the burgeoning environmental movement or the outdoor life. Within just a few years, he had been fully initiated as a backpacker and river runner, and with his colleagues had launched three important legal actions to protect California rivers: opposing the New Melones and Auburn Dams and beginning a three-decade long legal battle against the East Bay Municipal Utility District to protect the American River.

Over the years, Graff's interests tilted away from litigation and toward policy work, and he became a key player in shaping water and energy policy. He had an ability to work effectively with traditional opponents and to find win-win collaborative solutions to knotty problems. Along with EDF colleagues, in the mid-seventies he helped move the Public Utilities Commission toward rate-setting regulations that would encourage conservation of energy. Later, they convinced two California utilities to scrap plans for coal and nuclear power plants in favor of energy conservation. In 1982, he was instrumental in bringing together strange bedfellows—Northern California environmentalists and prominent Central Valley agriculturists—to successfully oppose building a peripheral canal in the Sacramento-San Joaquin River Delta. This was the first foray in his decades-long efforts to safeguard the Delta.

Graff absorbed the lessons of economist colleagues Zach Willey and Rob Stavins regarding economic analysis of environmental problems and was instrumental in recasting the Environmental Defense Fund from an organization whose motto was “Sue the Bastards” to one known for collaboration and support of market solutions to protect the environment. His gift for effective policy work is perhaps best demonstrated by his central role in the design and passage of the Central Valley Project Improvement Act, 1991-1992, a comprehensive water policy reform applying market solutions to California water wars while incorporating strong environmental constraints. Graff was interviewed on this subject in 1994 as part of a Regional Oral History Office project on the CVPIA, one of many research projects in its longstanding series on Water Resources in California:

http://bancroft.berkeley.edu/ROHO/collections/subjectarea/natres/ca_water.html.

Having recorded the short focused interview with Tom Graff in the CVPIA series we welcomed the opportunity to conduct an in-depth biographical oral history when George Miller, a friend of the Bancroft Library and of Tom Graff, came to us with the news of Tom's illness and an offer of support for the fuller project. The full oral history enabled us to understand his achievements in CVPIA in the context of his entire career and his remarkable family and personal history. It includes his retrospective reflections on water marketing and its impact, and on water as a commodity versus water as a public trust. It also displays his warmth, wit, and wisdom, and his devotion to his wife and children, to good friends and colleagues, and to living a well-balanced life. His colleagues and adversaries agree that these personal qualities were central to his successes in crafting solutions to environmental dilemmas.

Interviewing began in Tom's home in north Oakland in July, 2009. Over the next three months we met for ten interview sessions, each from one to more than two hours in length. The final two sessions, on September 24 and October 1, took place at Summit Hospital, as Tom's health took a turn for the worst. Although we were able to cover nearly all of our planned topics, his endurance was compromised at the end, and his remarks abbreviated. Tom Graff died on November 12, 2009, without reviewing any of the interview transcripts. His wife, Sharona Barzilay, assisted us in verifying some of personal names mentioned, but lacking Tom's review, there inevitably will be minor errors in the transcript and a few inaudible phrases that we could not fill in.

Our interviews were audio-recorded, although the sound quality is compromised by the complications of his thyroid cancer; Tom requested that we not videotape our interview sessions. To see him in action, in good health, and giving an overview of his life work on water policy, view him giving a talk for California Colloquium on Water, at the University of California's Water Resources Center, on December 10, 2002:

http://www.youtube.com/watch?v=W5wW_kxd5T4. The EDF tribute to Tom Graff on his retirement is at <http://vimeo.com/7584627>. Audiofiles of the oral history interview sessions are available for listening in the Bancroft Library. Tom Graff also gave a substantial collection of personal papers mostly focused on western water issues to Bancroft Library. The Environmental Defense Collection at Stony Brook University houses substantial records of the Berkeley EDF office, 1971 to 1989, as well as the records of the national Environmental Defense Fund.

The Regional Oral History Office was established in 1954. ROHO conducts, teaches, analyzes, and archives oral and video history documents in a broad variety of subject areas critical to the history of California and the United States. The office is under the direction of Richard Cándida Smith and the administrative direction of Charles B. Faulhaber, The James D. Hart Director of the Bancroft Library, University of California, Berkeley.

Ann Lage

Interviewer

Berkeley, California

May 2011

Interview 1: July 7, 2009

Begin Audiofile 1 07-07-2009.mp3

Lage: Okay, we are now recording. Today is July 7, 2009, and this is the first tape of the first interview with Tom Graff, formerly with the Environmental Defense Fund, now retired. And I am Ann Lage, for the Regional Oral History Office. Okay, Tom, let's plunge ahead. We're starting with personal background.

01-00:00:27

Graff: Okay. Well, let me start by apologizing for my voice. I don't know how it's going to sound to people listening, but about two and a half years ago, I started losing some of my capacity. And then in early June of 2007, that was diagnosed as having been caused by a tumor pressing on one of my vocal chords. And that was then traced, through biopsies, to a thyroid cancer. And by the end of June of 2007, I had the thyroid removed. But one of my two vocal chords is permanently damaged, so I'm operating on 50 percent capacity, if that.

Lage: Well, it seems like you're recording just fine, so we'll—

01-00:01:28

Graff: Good, okay. And I've been treated since June of '07, in various ways, to try to keep the cancer at bay. And since I'm still here two years later, it's obviously been somewhat successful.

Lage: Yes. And an ongoing process, as we just talked about, which may start up again soon.

01-00:01:53

Graff: That's correct. So there may be interruptions here, who knows?

Lage: But we will just move ahead as swiftly and thoroughly as we can. You have a very interesting family background, and I would like you to tell me about it and also reflect on how it impacted you and made you who you are.

01-00:02:15

Graff: Okay. Well, I'll start with a generalization and see if I can justify it as I go along. I grew up as the son of German Jewish intellectuals who emigrated to flee Hitler. And fortunately, I guess, my father wrote a travelogue about his escape, which took place, really, as the war began in Germany in 1935. Also my sister has written a book, kind of a tribute to my father, which she dedicated to me, very nicely. And a cousin of ours, who is the daughter of my mother's oldest sister, has also written kind of a personal autobiography of her travels, which— And she is considerably older; she's almost twenty years older than I am. She's the oldest of the bank of cousins; I'm the youngest. She's written about her experiences, which involved, in her case, going from Germany to England and then to the US.

01-00:03:40

In my father's case, he waited, really, until the last minute to escape Germany and was on a boat in the mid-Atlantic—well, not the mid-Atlantic, in the Atlantic—when the war broke out, September 1, '39. Through a combination of fortuitous circumstances, he managed to get off the boat in the Dutch Indies—I think it was Aruba, Curacao—and made his way to Honduras, where my mother was waiting for him. She had managed to leave earlier in 1939. Originally, she was going to Guatemala, but ended up in Honduras because the sponsors of their visas and their travels had moved their operations from one country to the other. My father arrived in Honduras, I think it was the 29th of September, '39; and on October 30, he and my mother got married. Ten months later, my sister was born. And then another three and a half years later, January 1944, I was born. Two years after that, two and a half years after that, my birth mother died and I have no recollections of her as a person. I've seen pictures and some—.

My grandmother on my mother's side was living with us at the time. And she and my father did not get along very well and had differences of opinion about how he should proceed with his and our, my sister and my, lives. He, in a quite remarkable courtship, if one could call it that, courted my stepmother, and after minimal meetings and a long letter-writing relationship, they married about fourteen months or so after my birth mother died, September of 1947.

And two months later, in November, when I was nearly four, the three of us, my father, my sister and I, emigrated from Honduras to the United States, to New York City, where my stepmother was a doctor, having been the only female in her medical school class. Classes were different in Europe in those days than they are here, and probably there now. So she actually studied medicine at several universities in Germany, but got her— Well, her dissertation got her qualified as a doctor, I think a couple of years before Hitler took power in 1933. And that becomes relevant much later, because she became entitled, I think in the late fifties, to reparations of a very substantial level from the German government.

Lage: And your father, also?

01-00:07:36

Graff: My father was a lawyer, trained as a lawyer. He grew up in Berlin. His parents were alternately prosperous and bankrupt.

Lage: Oh, alternately.

01-00:07:56

Graff: So he grew up with both conditions. And it was somewhat like it is right now in the US, where some people who had large fortunes basically lost them. So my father, from a young age—I think he was thirteen or fourteen—started to work, mainly as a tutor. His educational background was, therefore, somewhat spotty, but he did qualify as an attorney. And through the twenties, when my

grandparents were basically not working any longer— It's always amazing to me that my grandfather was born in the last year of the American Civil War, 1865. There's a great picture, which I don't have right now [in my sister's book], of my father and my grandfather and what I'm pretty sure is my great-grandfather—

Lage: All looking very much alike.

01-00:09:04

Graff: Right. But I really know very little about those generations, my grandparents. My father did describe trying to get them out of Germany after he managed to emigrate. But basically, by then the doors had closed. And so both they and my stepmother's parents died in concentration camps.

Lage: I don't want to interrupt the story, but at some point, tell me— Your father was aware of what was going on from that point?

01-00:09:36

Graff: There are a lot of different stories of why people stayed and why people left, why they left when they left. As my sister describes it—really, mainly from public sources—when Hitler took power, there was a quite large immediate exodus.

Lage: Is that when your stepmother left?

01-00:10:01

Graff: No, she left in 1939. Early in '39.

Lage: Oh, your stepmother?

01-00:10:05

Graff: Oh, my stepmother? No, she left, I think, in something like '37. And she and her parents and one, maybe two of her brothers—yes, two of her brothers—went to Holland, to the Netherlands. And she stayed there about a year, and then managed to get a visa to the US. So she came to the US pre-war. And was not immediately licensed. She did odd jobs. She was a nurse in summer camps; she did massages for Wall Street moguls—I assume legitimate ones. But eventually, she brushed up on her English and qualified as a doctor in New York. I got away from my story some.

Lage: I know, because I distracted you about how much people knew—

01-00:11:06

Graff: How much people knew.

Lage: —and why some people left and others did not.

01-00:11:09

Graff: I don't have any firsthand information on that. There are lots of books written on this, some of which are—

Lage: I just wondered if your father himself had—

01-00:11:17

Graff: Well, he was an unusual guy, in terms of his—he was very bound up in German culture. His great passions were particularly music, but also art and other aspects of the fine arts. And so Germany was still a fairly vibrant place, Hitler notwithstanding. [Bertolt] Brecht was a big name in those days. And his younger brother, as it turned out, was a multitalented, mainly woodwind-playing musician for a very well known German band called the Weintraub Syncopators, which you can look up on Google, if you want. So they both stayed for some time. But then my uncle and his band decided, I think in '36 or '7, something like that, not to come back to Germany. They had toured Asia, basically, getting as far as Australia. Actually, I think he stopped originally in China and Shanghai. But then he made his way to Australia and lived there for many years. Ended up in Spain, where I visited him when he was quite old, and died in Spain. In fact, his last consort—possibly his wife, I wasn't sure of that—was the mother of a quite prominent journalist, American based, but a journalist who covered Europe, name Pfaff, P-F-A-F-F. And I've read a little bit of his stuff, and I think he's not retired fully. My sister has made some contact with his sister.

But anyway, my father was stripped of his ability to practice law because he was Jewish, and still made a living, basically, in music and in dance, as a producer of shows, as a performer, as an organizer of various kinds of musical performances, particularly classical music. And in that sense, he and his brother took different paths, but they were both quite musical. He went overseas. He was in Prague, what was then Czechoslovakia, quite a lot. And despite all the discrimination, there was this small cadre, I think particularly of Berlin Jews, who did better than some from what my sister refers to as the provinces. I'm not sure that's how it was termed in Germany in those days. But in his little memoir, he doesn't identify it this way, but Kristallnacht, which is how it's known at least in the US, finally prompted him to act, when there was destruction of Jewish persons and property and the beginnings, or at least the stepping up of removal of Jews to camps that later became death camps. Maybe they were a little bit death camps. So first he tried to flee to Switzerland illegally, sneaking across the border. Was apprehended, eventually. Actually, wasn't apprehended, he turned himself in to the Swiss authorities, thinking that they would help him. He had a US visa at that point. But instead, after putting him in prison for a few days, they turned him back to Germany and he entered the way he left.

Lage: That was a remarkable tale in his little memoir.

01-00:15:51

Graff: It is, right.

Lage: And also I was taken by the fact that he remembered and appreciated all the other people in jail with him, including the ones who were just—

01-00:16:01

Graff: Common criminals?

Lage: —common criminals. [laughs] Although he didn't really think they were criminals. Does that say something about his personality?

01-00:16:09

Graff: Yes, I would have to say it does. In both his political ramifications and personal, he never harbored—at least that I could see as a son, forty-three years his junior—open resentment of the Germans. Certainly, as a class or as a people. He obviously thought Hitler and his immediate henchmen were horrible people, but he just didn't carry a grudge. And my stepmother, on the other hand, had the belief that they were hateful.

Lage: The whole—

01-00:17:07

Graff: The whole gang, right. And of course, there's a big debate in the literature over—which to me is extremist crap. The average German knew a lot more than he or she led on. At least that's my interpretation. On the other hand, you can't, or probably shouldn't, condemn a whole race or country for acts that probably would not have happened had it not been for the leadership. Of course, they elected that leadership, originally. On a personal level, my father was an unusual combination of being highly interested in the world, but not personally ambitious. And so although he made a living for himself as a lawyer and was active in the music and arts world, and helped take care of his parents—.

It's interesting. I have a different recollection than what is in my sister's book. I always thought he and his brother didn't get along that well, and that his brother didn't contribute to the well being and care of his parents. My sister's book does not say that. It actually says they were friends and got along. And in fact, Horst, my uncle, tried to get my father to move to Australia when my mother died in '46. But my father pointed north, not west.

Anyway, this is kind of what bears on my career. My father had very little ambition, professionally. And when he married my stepmother and she had a career that over the course of, well, a little over twenty years, blossomed and was reasonably lucrative— She was a general practitioner. I'll just go ahead a little bit. She came to New York in November of 1947, as has been pointed out by many people, just before the Macy's Day parade. And we had an apartment on Central Park West, which is where it started. It starts at Central

Park West and 96th, and we were at 97th, between 97th and 98th. So one of the first big things that happened to me in the US was being able to see the Macy's Day parade firsthand.

Lage: You probably thought this was all for your arrival. [laughs]

01-00:20:10

Graff: Right. Anyway, this gets complex, and maybe we'll come back to it as we get into what happened to me later. But it was a very unusual upbringing, I think particularly for a male. My sister and I have differences around this. Everybody, all my friends—particularly when I moved away from New York City to Syracuse, a suburb of Syracuse, upstate—all my friends' fathers went off to work and their mothers pretty much stayed home. And in my case, well, my mother worked mostly from home and also did house calls. When I was a little kid, before I went to school—I think for like a year and a half, or maybe it was just a half a year—What did I do? I skipped kindergarten, I guess. I used to go with my mother on house calls. There was no one really around to take care of me. We lived in a very small kind of dual apartment in a small building right on Central Park. But it was old and somewhat decrepit and was eventually condemned, and the whole set of blocks there were razed and a new—

Lage: New high-rise?

01-00:22:48

Graff: High-rises came in.

Lage: The Robert Moses era?

01-00:21:50

Graff: Robert Moses era. Yes, indeed. I think they were Moses-sponsored. And they were, in fact, although they — What are they called? They were called Park West Village. Their removal was rumored for a long time. My parents moved in response to what they knew was coming. Although the Park West Village didn't actually get built until some years later. I went to school at Public School 179, between 100th and 101st streets, between Columbus and Amsterdam. And I was there from basically first to fourth grades. And it was then, really, that I started to figure out that I had sort of academic talents that were unusual.

Lage: Even then, in these early grades?

01-00:23:06

Graff: I think so, yes. It was a very odd school, in terms of its demographics. There were reasonably prosperous kids that went to the school, who lived either on West End Avenue, Riverside, or on Central Park West. But the blocks in between, in those days, were not quite slum or ghetto but the families and the

children from those blocks, which were longer than the blocks that went uptown/downtown, just had less. Didn't have books, basically, at home.

Lage: What ethnicity were they?

01-00:23:54

Graff: Black and Puerto Rican.

Lage: Oh, even that early?

01-00:23:56

Graff: Yes. In fact, my sister's best friend was a Puerto Rican girl. We used to pick her up on the way to school. By the time we left there, I was in fourth grade. The school went through sixth. And what they did is they combined the so-called smart kids in one class. So in, I think second, third, fourth and— at least the last couple years, I was in a class of multi-grades, with a few remaining kids from well off and the academically oriented households.

Lage: Was your English good when you arrived?

01-00:24:43

Graff: I don't remember that. I was trilingual as a three- and four-year-old. German, Spanish and English. But I completely lost the Spanish. And the German, my parents, when they were first together, in the second marriage of my father's— I might mention by the way, that my birth mother had been married previously to [her marriage to] my father. And her [first] husband and she had divorced and he had committed suicide. He's kind of a mythical figure in the family.

Lage: And she had no children by that—

01-00:25:23

Graff: No children. He manufactured ties. That was his job. And he had a sports car. Those are the two facts I remember. [Lage laughs] And he was quite dashing. My birth mother was also quite dashing. Both of her siblings, older siblings became— Well, my sister says they both became psychiatrists. I always thought that my uncle was a more conventional doctor, but I'm not sure about that.

Lage: That's interesting, they both became psychiatrists. And your mother, was she trained as—

01-00:25:59

Graff: No. She's described by my cousin René, who ultimately sort of became somewhat of a mother figure to me, as did my mother-in-law from my wife Sharona— My stepmother always provided for our family physically. There was food on the table and we eventually lived in suburban comfort and I went to great schools and so on. On a personal level, she had difficulty emoting, I would say.

Lage: [laughs] You sound like you're being restrained there, in that description.

01-00:26:47

Graff: Yes, she lived a hard life. And I don't know how much of it was her personality and how much of it was a reaction to the experiences that she'd had. But she had a soft spot for my dad. I'm not sure she had a soft spot for me; I'm pretty sure she didn't. Nor for my sister. We always sort of bonded, my sister and I, over which of us she liked least. But it wasn't— She used to rag on me, particularly, because I liked to play sports after school. And they were mostly pick-up games, unlike now, when everybody has a uniform and formal coaching and all that. Mostly, it was just kids in the schoolyard in the school, Cherry Road School, which I went to from middle of fourth through eighth grade.

Lage: When you went to Syracuse.

01-00:27:54

Graff: When I went to Syracuse. Had a lot of fields and basketball courts and stuff like that. So depending on the season, as soon as school was out, a group of us who were interested in sports would go out and play. And sometimes there were intramurals, but mostly it was just— I was supposed to be home at a quarter to five. Particularly the non-winter season, that would be in the middle of a game. So I would come home late, and I would be reprimanded on my not cooperating in the running of the household. My mother, I think four days a week—maybe it was three—had evening office hours. So we had to eat early.

Lage: Oh, so she wanted you home for this early dinner—

01-00:28:48

Graff: Right.

Lage: —not to do your homework.

01-00:28:50

Graff: Right. The homework got done pretty easily. And then, of course, we had to be quiet all the time. So if we made noise, that was a bad thing, too. Anyway, so she would— She was harsh. But I don't believe she ever sort of physically abused me.

Lage: Did your dad intercede on any of this?

01-00:29:16

Graff: Well, he would try. He was a peacemaker, basically.

Lage: The usual role of the woman. [laughs]

01-00:29:22

Graff: Right. There's one exception to this, which is— I don't know if the listeners will want to continue, but in the summer—I think between either sixth and

seventh or seventh and eighth grades—a small group of us guys, in the late evening, before dark but as dusk struck, took it upon ourselves to become juvenile delinquents and broke windows at the school. And even, in one case, entered the school, kind of rampaged around. I don't think we did anything much. But this is one of two experiences I had where I got crosswise with the law and was hauled in to the equivalent in New York of superior court out here, municipal court, and was fined and put on probation or something. I was a kid, okay?

Lage: Yes. This was sixth grade or summer after.

01-00:30:27

Graff: The summer between sixth and seventh. Or seventh and eighth, I'm not sure. But maybe sixth and seventh. Anyway, my father was crestfallen that his perfect son behaved quite so contrary to what was right in the world. And my mother took it much more like, boys will be boys.

Lage: Interesting.

01-00:31:05

Graff: So I give her credit for that. In fact, the other person I gave credit for that was the music teacher at the school, who— My parents, although they were very sophisticated people, they didn't know American custom well, so they didn't know what to make of the whole thing. And {Roz Eggleston?} was the name of the music teacher. She told my parents—my mother heard her, but I think my father didn't—not to worry so much about it. This did not condemn me to a life of crime. But it's interesting. I don't know how an equivalent set of acts in today's American suburbs would be handled, similarly or not, I don't know. And just to skip ahead, the one other time I got in trouble with the law was when I was a summer camp counselor, in my college years, and a good friend of mine and I illegally bought a six pack of beer. It was in Maine. I think the age was twenty-one and we were twenty or something. The police pulled us over and we got hauled into court there also and got a talking to. But other than that, I've had a pretty clean sheet.

Lage: Well, did this incident at the school, were you horribly shamed by it?

01-00:32:47

Graff: I was somewhat shamed, yes. Certainly, going to court. There were these other guys and their parents. That was not my high point. I'm pretty sure that it cost me the, I don't know, whatever the best citizenship award is for boys in eighth grade. [they laugh] But I got over it. But it's interesting. I think it probably, at some level, made me realize that there's not that big a jump from being law abiding to taking a chance and doing something that seemed like fun at the time and could get you in trouble. So as I watch the criminal justice system, mostly from afar, I might have a little more sympathy with particularly young people who get in trouble.

Lage: Right. Sometimes they're thrown in prison for life.

01-00:33:57

Graff: Well, they had to have done more than I did.

Lage: Yes, more than what you did, but—

01-00:34:02

Graff: Right. So anyway, we were talking about New York City—from November of '47 to December of '52, we lived in New York City, on Central Park West, and I went to P.S. 179.

Lage: And it was recognized that you were an unusually good student.

01-00:34:27

Graff: In the fast kids' class. Right. And then I remember going to Syracuse. My first day back was right after winter break, so it was early in '53. I went to fourth grade class. And I remember two things about it. The first day, we were doing penmanship. And I thought, wow, this is— I did that in second grade or something, back where I came from. And "See if you can do your letters." And I thought, man, I moved to the sticks. That was one time. And then the other is I overheard one— there were two people who entered school the same day. And I don't remember the exact words, but it was, well, I guess we added one hot chick—it wasn't said that way—and one nerdy guy.

Lage: One of the teachers said that?

01-00:35:40

Graff: No, no, one of the other kids said it to another kid in my earshot. But eventually, I overcame that.

Lage: [laughs] That must've been a blow to your ego.

01-00:35:54

Graff: I imagine it was. But I was a pretty good athlete, so over time, that was what was valued. The other kids knew I was smart, but whether that was important to them wasn't— They were middle-class kids; they were not lower-middle-class kids. They were all Republicans, for one thing.

Lage: You were getting into a completely uniform environment, it sounds like—

01-00:36:19

Graff: Well, yes.

Lage: —as opposed to New York.

01-00:36:20

Graff: Now the big division was actually Catholic and Protestant.

Lage: Oh, really?

01-00:36:25

Graff: Yes.

Lage: Not many Jews.

01-00:36:27

Graff: None. None. Except my family. And I think my sister had more trouble with that than I did. I just kind of like— Well, I knew who my parents were, I knew something of what my heritage was, even at age eight. But it didn't come up, particularly. Occasionally, there would be an anti-Semitic remark that wasn't directed at me. It was just kind of like part of the lingo. And as time went on and sports became more formal and there were school teams and stuff like that, I was good enough to make the teams. So eventually, my eighth grade year, I was what would now be called the starting point guard. And we had a kid on the team, in fact, who ended up marrying the girl that was considered the hot chick. [they laugh]

Lage: Well, sports will do a lot for you. [laughs]

01-00:37:32

Graff: Right. Actually, I liked them both; they were good friends.

Lage: Yes. So that basketball. And what other sports—

01-00:37:37

Graff: [over Lage]. He ended up going to Duke and playing for a team that went to the Final Four.

Lage: Oh, really? So that was—

01-00:37:46

Graff: [laughs] He was a really good player. In fact, I've been in email contact with one of our classmates, who has a terrible story. He went to Syracuse University eventually. And he was a slight guy, physically. Probably didn't weigh much more than 120 pounds or something like that. He was being carried by the fans at a Syracuse football game—and football was big in those days at Syracuse; Jim Brown was one of my childhood heroes—and he was dropped. When you're kind of being slid down the—

Lage: Oh, this was in the rooting section type of thing.

01-00:38:34

Graff: In the rooting section. And paralyzed from the waist down.

Lage: Oh, my.

01-00:38:39

Graff: So he's lived the rest of his life as a paraplegic.

Lage: Oh, my goodness.

01-00:38:43

Graff: But he's got a great spirit. He's the sort of chronicler of our class.

Lage: So you've kept in touch with all these people from your—

01-00:38:52

Graff: Well, to some— Yes, yes.

Lage: Or a number of them.

01-00:38:54

Graff: A number of them. Well, Phil Allen, who was the basketball player, I've contacted when I— Well, the first time I was invited to speak at a conference in Toronto, which is actually not far from Syracuse. I think people don't realize that. It's just around the lake, Lake Ontario. And the way I arranged it, I spoke in Toronto, I rented a car, went to Syracuse and visited my old friends. And EDF had a board meeting in the Adirondacks, so I combined the three things in one trip and reestablished some contact. And then years later, I've taken one big trip with each of my three kids. With Samantha, when United Airlines first started flying to Japan, they had a special for people that had a lot of miles. And so I took her to Japan and we just played there while I also did some environmental work, which was kind of fun. I was a speaker at a public hearing in a small Japanese town that was adjacent to an American naval base. Yokosuka Naval Base. It is, I think, kind of like the headquarters of the United States military presence in Japan. And it was a controversy which— In those days, particularly. This would've been mid-eighties, maybe; there was a controversy over housing being built into this little forest. Basically—I don't know if you've been to Tokyo and environs—

Lage: No, I haven't.

01-00:40:53

Graff: —but it's hugely urbanized. Tokyo, Yokohama, the surroundings are flush with buildings.

Lage: Yes, yes, high-rises.

01-00:41:02

Graff: And this was one little nature preserve. And the locals were trying to stop the Japanese government from building housing for US military personnel. And so I came and said in the United States, we would have to have environmental impact statements, is basically what I said. But it was very formal. It was in a local gymnasium. And it was being translated both ways.

Lage: But it was a public meeting?

01-00:41:35

Graff: It was a public meeting. And it turned out it was actually a fun event for Samantha because there was one couple, who were among the leaders of the

local opposition, the mother of whom was Welsh. The father was Japanese. That was very rare in those days. But obviously, she could speak English and her kids could speak some English. So Samantha was being taken care of by English speaking people, but also got a flavor of what life in Japan was like. So that was my trip with her.

But then many years later, my trip with Ben was a tour of Eastern baseball parks. And we started at the old Shea Stadium and ended at the old Yankee stadium. But I plotted a week's worth of games. Well, we went to Philadelphia after New York, and then we went to Pittsburgh, and then we went to Cleveland, and then to Detroit. We actually had two games in Detroit because the A's were there. But on the way back, there was no baseball to be had at the major league level, so we stopped in Syracuse and saw an International League game at the local stadium.

Lage: And saw some old friends?

01-00:43:01

Graff: Saw some old friends, yes. Phil Allen was the host. And that was fun, and a lot of driving.

Lage: Oh, this was all driving.

01-00:43:11

Graff: All driving. Well, yes, from—

Lage: Did you go to the Baseball Hall of Fame? Or was that—

01-00:43:16

Graff: Yes, we— Actually later on— my wife and kids think I'm crazy, but we went to the Baseball Hall of Fame in Cooperstown. And after we were done, I said, "You guys really ought to see where I grew up." Because Cooperstown's not that far from Syracuse. But it's the wrong direction from New York, which is where we were based. But I insisted. And so we drive to see the house that I grew up in. But we didn't see friends. And then we turned around and—

Lage: And drove back to New York. [laughs]

01-00:43:51

Graff: Back to New York. And then several years later, Rebecca, the youngest, had a semester abroad in Buenos Aires, in Argentina. So I flew down there and we were together for a week, both in Buenos Aires and we took a trip to the northwestern corner of Argentina.

Lage: You didn't take her to Honduras?

01-00:44:18

Graff: No. No, that's such a big trip. I went to Honduras then on my own, in 1977, when I was between marriages. And David Roe and his parents— David Roe

will come into this story later, too. His parents, his father in particular, was a big sailor. And he had arranged a Caribbean trip for himself and his wife, David and his then girlfriend, and another couple. And like a month before they were scheduled the leave, the other couple backed out of the trip. And David's mother got a little nervous there was only two men on the trip, so I was invited along. It was a fabulous trip. I know very little about sailing. But David's father was a pro and David had learned at his feet, so he knew quite a lot, too. Anyway, we had a great time. At the end of that trip, they returned to the US and I made my way to Honduras and Guatemala. Guatemala and Honduras, actually.

Lage: Saw your former—

01-00:45:44

Graff: And saw the former— the sponsors, friends of my parents, who had gotten us to Honduras. And by then, they were quite old, in their eighties.

Lage: But that must've been a nice journey, to meet the sponsors.

01-00:45:57

Graff: It was an interesting journey. Even my sister's account and my father's leave very vague what all they did. But they must've been very generous, both financially, in terms of setting my parents up when they got to Honduras.

Lage: Yes. And then making the arrangements for the initial visas.

01-00:46:23

Graff: Right, that's right, yes.

Lage: And why had *they* left? They had left early enough to get established.

01-00:46:29

Graff: They left in the 19-teens.

Lage: Oh, they left way early.

01-00:46:32

Graff: Way early, yes.

Lage: So they were family friends?

01-00:46:37

Graff: I guess so. I'm embarrassed to say I know little about them. When my sister went to visit Honduras, which was almost twenty years later, they had died. And their son, Ronnie, eventually—My sister had difficulty finding him, apparently because there was a big fight over custody and dollars and— Anyway, they did eventually find him. And he had a very different view of life. I think the next generation are now mostly in the States. I should try to look him up; it's one thing that I haven't done.

Lage: Well, did the older generation tell you something about your mother?

01-00:47:29

Graff: Well, yes. She was terrific. The other thing that they said, which is inconsistent with my father's and my stepmother's feelings, and I think René's, even, is that my grandmother was a wonderful woman.

Lage: Oh, yes. Hedwig?

01-00:47:51

Graff: [with German pronunciation] Hedwig, yes. That's the German pronunciation. H-E-D-W-I-G, I guess, in English. I think they thought that my father was rash and wasn't thinking clearly in basically absconding with the kids, going to the States and abandoning his mother-in-law, who had already lost two children and soon would lose her third. When she died— Having lost all three of her children, and basically alone, she returned to Germany and died in an old age home in Germany. In fact, that was the occasion of my reconnecting with my birth mother's family, because it was basically forbidden— I don't know about so much explicitly as just that's the way it was—to mention that there had been this other mother.

Lage: Oh, to mention it to your stepmother.

01-00:48:55

Graff: To my stepmother. So from age three to age seventeen, it was—

Lage: Just not mentioned.

01-00:49:04

Graff: It was not mentioned. And I kind of—

Lage: So your father didn't talk much to you.

01-00:49:10

Graff: Well, when we were not in my stepmother's earshot, I knew a little bit. But I didn't know about cousins or specifics. And then one day my cousin Hans, who was the son of the middle sibling, who was a male, Richard—there are two Richards; I have two Uncle Richards—showed up at our doorstep. And this was the summer that I was going off to college.

He said that he wanted the agreement of all the older generation, my father and his brother and I guess René and her brother and—who else would that be? They had four half-brothers and sisters—to basically contest the will of my grandmother. My father didn't want to get involved. So that kind of fizzled. But it was the first occasion to—

Lage: To realize that this whole family—

01-00:50:40

Graff: —to realize that this whole family existed. And one thing he said was that his cousin René lived in Boston. And I can't remember when I found this out, from him or shortly thereafter, from her. But she had been married to an English professor at Brandeis. She'd gone to Smith.

Lage: And she was your mother's niece.

01-00:51:08

Graff: My mother's niece. And she got to the US in like 1940 or '41. And my aunt died in '41. And so she was with her stepfather and his soon second wife. And that was complicated because her mother and stepfather became Catholics. And one of the things that I learned from my sister's book just recently is that in the aftermath of the war, he [René's stepfather] basically had a contract with the new German government to interview Jewish applicants for reparations, who claimed psychiatric problems arising from the Holocaust. And he was never a favorite sort of person in the family. Although my parents visited him. My brother-in-law, my sister's husband, visited him. I never met him. One of his sons was kind of a rebel, lives in Santa Rosa. They were in Los Angeles.

Lage: And was this the son, also, of your aunt? Or a later son?

01-00:52:35

Graff: No, it wasn't with my aunt. My aunt had six kids, two by her first husband and four by her second husband. Joe Haenel was his name. And he's a retired school teacher in Santa Rosa.

Lage: I'm going to put this on pause for a sec, if I can remember how to do that.
[audio file stops and re-starts]

01-00:53:12

Graff: So this cousin, Larry Haenel, we've become friendly. We don't see him that often; he's lost a wife to cancer and his second wife has also been fighting cancer.

Lage: So you have made reconnections with this family, kind of distant family.

01-00:53:40

Graff: Right. Well, they're no more distant than René. He's a half-brother of hers and a cousin of mine. But the one time I was ever late to an important event was his daughter's wedding, which was in their backyard in Santa Rosa. And we had this enormous traffic jam on the way up there and got there kind of like as it was already going on. Anyway, how'd I get distracted by that?

Lage: Well, we've brought up reparations twice. I don't know if that's where you're going with this.

01-00:54:18

Graff:

Well, why don't we get to that? That actually is another story. My stepmother's brother was a lawyer in Germany and I think even in Holland. And then he was sort of active in trying to get emigrating Jews out of Germany. And somehow—this is not described in my sister's book, and I don't know, but I don't think I made this up—he was arrested by the Nazis. But somewhat surprisingly, rather than taking him back to Germany to go to one of the camps, he was basically expelled. And so he, by himself, leaving a wife and two kids behind in Holland, went to Cuba and spent the war years in Cuba. And I'm pretty sure was not celibate in those days. [they chuckle] In fact, I think he had a relationship with a woman who, later in New York, became a dentist. Anyway, his wife was left behind and went into hiding in Holland. It was sort of an Anne Frank type story. And the two kids—the younger of whom is now a very good friend of ours, was a radiologist in San Francisco—also went into hiding and were in a school. And this is in my sister's book. I can't remember what she said about it, but they made it through most of the war and then were discovered; essentially in the last months of the war, were taken to a concentration camp. And to her amazing credit, my aunt came out of hiding and joined them—

Lage:

Oh, my.

01-00:56:31

Graff:

—in the camp. Anyway, they were eventually reunited, but—

Lage:

And all three of them survived?

01-00:56:37

Graff:

All three of them survived.

Lage:

And were reunited with the husband and father.

01-00:56:40

Graff:

And went to Cuba. And there're some interesting stories about immigration here, too. My mother, who was by then a US citizen—

Lage:

Your stepmother.

01-00:56:49

Graff:

—stepmother—got them into the States. But she couldn't get her middle brother into the States because he was a doctor and had gone to China and had married a woman of Chinese extraction from Vietnam, who was a nurse. He was a, I don't know, head doctor at a Chinese hospital that was tied in with the Chiang Kai-shek government. So he emigrated to Israel. And he and my aunt had three kids, three Eurasian kids.

Lage:

In Israel.

01-00:57:26

Graff: In Israel. Who we've also kept up with and connected with.

Lage: A remarkable group of interconnecting stories, just—

01-00:57:36

Graff: Yes. And her third brother went to South Africa.

Lage: The one whose wife was in the concentration camp?

01-00:57:44

Graff: No, no. That was Richard. He went to Cuba and then came to the States.

Lage: Yes.

01-00:57:49

Graff: You asked about reparations. My parents delayed past the deadline that the German government had set for applying for reparations. This is the story I heard. And my uncle, by then, had specialized in international law, and particularly in legal dealings with the Germans and the Austrians and others. He pleaded their case. I don't know this to be true, but I think they were ambivalent about applying for reparations. I don't know this. But eventually they decided to do it, but they were beyond the statute of limitations. But my uncle wrote the papers and said they were in this rural setting and didn't understand their rights and so on. And so they eventually did qualify. And really, in my mother's case, because she was working for the government—

Lage: When she was in Germany—

01-00:58:58

Graff: Right after she got out of medical school, got a medical degree. She was presumed to have risen in the bureaucracy to a quite high level, so she got a lot of money. My father, who had originally worked in the courts but then went into private practice, was deemed not to be as qualified in his profession as she in hers, so he got less. But between them, it was a substantial amount.

Lage: It was significant, yes.

01-00:59:31

Graff: It was paid in marks; it was non-taxable in either country.

Lage: Oh, really? What did it amount to, do you know?

01-00:59:38

Graff: I should know; I knew at one time. I became the executor of my mother's estate. And after my father died, she still got a reduced portion of his pension, so to speak.

Lage: So it really provided security in the—

01-00:59:57

Graff: And that plus Social Security, plus her income over the years, meant that they were prosperous. They paid my tuition at Exeter and Harvard, Harvard Law School. The one time and money entered the equation was interesting. When I graduated from Exeter, where I went two years, I was—

Lage: We need to go back and cover that, too.

01-01:00:28

Graff: —right—I got sophomore standing at Harvard, and so I could go through in three years, which I did, to my regret. And I remember raising it once with my father. And I don't remember the words, but he basically said, "That comes out of our pocket."

Lage: [laughs] Right.

01-01:00:53

Graff: So I dropped the idea. I wasn't sure I would do the fourth year anyway, but—

Lage: Well, that's a logical [laughs] thing to raise.

01-01:01:04

Graff: I guess so.

Lage: Even though it wasn't as expensive as it is now. I want to stop here for a minute and change the tape.

01-01:01:11

Graff: Okay.

Begin Audiofile 2 07-07-2009.mp3

Lage: Okay, now we're on. Let me just mention this is tape two, still July 7, '09, with Tom Graff. Okay.

02-00:00:13

Graff: So picking up some of the early experiences. My parents were immigrants. They were, particularly my father but my mother too, interested in ideas and intellectual pursuits and so on. And Syracuse was much more middle America. Education was valued, but it was not expected that one would be particularly outstanding. It almost didn't—

Lage: In the schools or the children's families or—

02-00:00:56

Graff: [over Lage] In the schools in general. Yes, I think generally. So I don't know the numbers, but I would guess that from my suburban class at Cherry Road School—and we scattered in high school, for various complicated reasons—I

would guess that 75 percent of the kids went to college, maybe more. I didn't keep track because I went off to school.

Lage: That's a high percentage.

02-00:01:25

Graff: Yes, pretty high percentage. And some of them were very capable.

Lage: Did they have special classes there, as they did at P.S. 179?

02-00:01:35

Graff: [over Lage] No, it was, I think, two classes a grade. And it was arbitrary because we would be shuffled in at the end of the year. So you'd not have the same classmates from year to year, necessarily. And it was a good education; it wasn't super high-powered, but you learned stuff. And like I said, I concentrated in sports, basically.

Lage: [laughs] Right. But did your work.

02-00:02:10

Graff: I did my work. Yes, I was the equivalent of first in my class. I don't know that they ranked people in those days, but I kind of knew where I stood, and people would talk about their grades and stuff. And as I mentioned when I was talking about kids, trips that I took, I got to be very friendly with the boys and the girls in the class. In fact, where?—[Pause in recording, Graff locates a photo of classmates]—

Lage: Ah. Cherry Road School. It does look very fifties. Fifties suburban America. Sweet looking.

02-00:03:01

Graff: So I picked up this all-American kind of approach to life from my years that extended, actually, beyond Cherry Road School for two years, to an urban high school in Syracuse called North High.

Lage: And how would you describe that? Now, you've mentioned sports.

02-00:03:24

Graff: Well, I played on a JV basketball team at North. And what happened was Westvale, the town where I grew up, did not have its own high school. And my sister went to the high school at the neighboring town, called Solvay.

Lage: Is that you there [looking at photos]?

02-00:03:48

Graff: Yes. [Lage laughs] And this is the guy who is a paraplegic now, right next to me. So what grade was that? Well, '56, so I was twelve. I think that was seventh grade. And this was the rabble rouser that kind of got me in trouble. [laughs]

Lage: There's always one in every crowd.

02-00:04:40

Graff: So yes, so I kind of learned the ways of middle America in those years.

Lage: And was that a conflict with your parents? Did they—

02-00:04:53

Graff: Well, no.

Lage: Except for the time you got in trouble? Were they concerned about the sports or you not being intellectual enough?

02-00:04:59

Graff: [over Lage] My father was always— he never said anything about it. Or maybe that's not even true. [discussion of background noise from gardener— audio file stops and re-starts]

Lage: Okay, a break there for the weed whacker. I think it's more distant now. So we were talking about the typical suburban guy and the kinds of things you did and whether that conflicted with your parents.

02-00:05:46

Graff: Well, I think conflict is too strong a word. Part of my father's philosophy, and from what I can tell, his father's, and what I hope is also true of mine, is sort of live and let live. Let your kids blossom in whatever directions they choose to do. So fortunately for me, my sister is definitely a music appreciator and eventually married a musician, a contrabassoonist in the New York Philharmonic Orchestra. So my father got at least some of his wishes fulfilled, in terms of his children following in his footsteps.

Lage: Well, you became a lawyer, which he had been.

02-00:06:45

Graff: Well, that's true, that's true. And I'm reasonably positive he was proud of my accomplishments and so on. When we get later on, to profession and so forth, I'll mention a couple stories about that. Anyway, my sister went to Solvay High School, which was in the neighboring town. And actually, was right next to Lake Onondaga, Solvay was. And one of Syracuse's big industrial plants was Solvay Process, which was eventually acquired by Allied Chemical. It had a horribly polluting plant on Lake Onondaga. It was more lower-middle class than Westvale. But it was short of kids, and so they took Westvale's ninth graders and put them in Solvay High School.

Lage: And Westvale was where you lived, a separate—

02-00:07:56

Graff: Right, right. And they're both suburbs, but one was more blue collar than the other. I still remember— My girlfriend went to Solvay. When I visited her at

her house, her father would be in— you know the kind of undershirts that had the straps rather than the T?

Lage: Yes, the Jackie Gleason— [laughs]

02-00:08:27

Graff: Right. I liked her a lot. Her father was different.

Lage: [chuckles] A big change from your father.

02-00:08:38

Graff: Right, right. They were not exactly soul mates. Although it's interesting. My father loved the United States. And one of the things he loved about it was equality. So he always made friends with the guy who pumped gas at the gas station; our barber was one of his friends and so on. They didn't socialize, but he kind of— that was important to him.

Lage: Well, that came across in that memoir, with the Swiss jail mates.

02-00:09:11

Graff: Right, right.

Lage: He just seemed to appreciate each one of them. [laughs]

02-00:09:16

Graff: Yes.

Lage: Now, how did you end up in Phillips Exeter?

02-00:09:22

Graff: Well, that's what I was getting at. So my sister did well, very well in school. Was never quite the student that I was, but obviously talented. Applied to elite colleges from Solvay High. She was a senior. I was a freshman at North and she was a senior at Solvay. And she had difficulties getting into the colleges she wanted to go to. Most notably, she never heard from Barnard. And this is told in her book. My father took it upon himself to drive—we never flew in those days—to New York and to seek out the Barnard admissions director and say, "You never responded to my daughter's application to go to Barnard." And much belatedly—I think it was summertime—Barnard admitted her. I think partly because of their own error and partly because she had a decent academic record, too.

Lage: Is the implication that they just overlooked her because of the school she came from?

02-00:10:38

Graff: One never knows. Anyway, as a result of that, my parents decided— And North was considered a less good school than Solvay. So my sophomore year at North, I applied to prep schools.

Lage: And were you happy to do that, also?

02-00:11:00

Graff: I was okay with it. We were sort of in a mini-diaspora. I can't remember whether it was by sophomore year; by junior year, I know some of the kids from Westvale went back to Solvay. Solvay opened its doors again. And a few years later, a new regional high school opened. But we were kind of in this interim period. But no, I was okay with it. I didn't know what I was getting myself into. So I applied. And I actually ended up liking Andover more than Exeter.

Lage: You went to visit, or—?

02-00:11:50

Graff: I went to visit the schools, yes. You did that New England thing. It wasn't that far from Syracuse. I still remember the conversation my father had with Ezra Pike Rounds, who was the admissions director at Exeter. Very formal New England kind of guy. And they talked about the Latin inscription on the entrance to the building where the admissions office was. Anyway, even though I preferred Andover—it was sort of more preppy, more collegiate—I got into Exeter and I did not get into Andover. I also got into a couple of the other schools. And for a brief moment, I thought about trying to do a switch with somebody who was in the opposite [background noise] circumstance, who had gotten into Exeter.

Lage: Would that be possible, to just do a switcheroo?

02-00:12:49

Graff: Well, it was conceivable. But then we changed our minds and said, "Exeter's fine." I really liked Exeter. I was there two years. How's that [gardening noise]?

Lage: It's *very loud*. It can be transcribed, but—

02-00:13:03

Graff: He's now mowing. Should I tell him not to? The problem is we're having a party on Saturday.

Lage: I think we should just go ahead. They'll be able to transcribe it. Yes, and it's getting softer, so—

02-00:13:16

Graff: Well, he's running back and forth. But there's more grass in the back.

Lage: Okay. [laughs]

02-00:13:20

Graff: Don't tell East Bay MUD [water district] that. [Lage laughs]

Lage: You would never know from the front yard [with low water usage plants].

02-00:13:31

Graff: Anyway, at Exeter, it was a third world. Different from Europe and different from suburban America. This is elite America.

Lage: Right. And how did you fit in there? How did you feel about the—

02-00:13:52

Graff: Well, it was interesting. One of the good things about Exeter is it's a pretty large school, so there— I don't know, as I recall, in the senior class, there were probably close to 300 kids, 250, 300 kids. And so although there were cliques and hierarchies, they're not overbearing. At least they weren't to me. And I had sort of— I don't know whether it's my personality or my capabilities or what, but I played for the basketball team. And playing is a bit of an exaggeration, but I was on the basketball team. In my first year there, which is sort of called upper-middle year, as opposed to junior year everywhere else—

Lage: Does that mean you came in the middle, other kids had been there—

02-00:14:51

Graff: Yes, I came in in third year.

Lage: So you're sort of entering into an already established group.

02-00:15:00

Graff: I was kind of like—I don't know if "star" is the right way to put it, but I was definitely one of the more significant players on the JV basketball team my first year. And there were only a few of us who made varsity, from that team, the next year. I still remember how I— The JV coach was a guy named {Gordon Ben?}. And I started off the year on the bench because I was new. And I was put into the game during the first game of the year, I don't know, halfway through the second quarter or something. And the other team kind of didn't notice that I had entered the game. So the first two times down the floor, I got the ball and I was open and I shot and I scored. By the next game, I started. [Lage chuckles] I had a lot of fun playing that year, made some friends.

Lage: So even at Exeter, as well as in Syracuse, sports was a way of making—

02-00:16:05

Graff: Sports was an in. And then I also turned out to be pretty capable academically. And so I made friends with some of the more serious intellectual kids. And I also made friends with a lot of other kids.

Lage: So you learned to cross boundaries, it sounds like.

02-00:16:23

Graff: Yes. I think it's one of my skills in life.

Lage: Yes. This relates to your later approach to the environmental work, it sounds like.

02-00:16:31

Graff: Right. I could pretty much get along with everyone. And in terms of my academic prowess, such as it was, I sort of hit the ground running. I got lucky in a couple of respects. There were a couple of feared Latin teachers at Exeter. But I got the one that was not feared, who was known as Easy Ed. A really nice man.

Lage: Had you had Latin at North?

02-00:17:01

Graff: I had had Latin at North, but I didn't know anything. Compared to the kids at Exeter, I was way behind. But my proficiency in math was sufficient, and in history, which I was interested in, that I made high honors all three semesters.

Lage: And that was valued there by the kids?

02-00:17:25

Graff: Yes. Oh, yes. Academics.

Lage: Yes. That was a change, probably.

02-00:17:29

Graff: That was a change. There was a significant wonk— It's always hard; you're in an elite institution and half the people are in the second half of the class. Right? So they have to sort of rationalize it somewhat. But they all knew academics counted. And in my first semester— they were on a trimester system. My first trimester of my senior year, I made highest honors, which when I first looked at Exeter's catalogs, it was clear that that was a big deal. I think over the years, it's— They've modernized, like the rest of the world.

Lage: Made it easier to be highest honors?

02-00:18:14

Graff: Well, maybe. Or at least deemphasized that distinction. There were half a dozen kids in the class that made highest honors, which is definitely up there. And it was the ultimate— I was there six trimesters, and I was the only one. But I still recall the varsity basketball coach sort of coming up to me after the awards, after it was known, and looking at me and saying, "You got highest honors?" [they laugh] And it was kind of a fluke, I think, actually. I just barely scraped the minimum requirement.

Lage: Now, did you play much for the varsity?

02-00:19:02

Graff: I played almost not at all.

Lage: Oh. So you did well on JV and then varsity wasn't—

02-00:19:08

Graff: Well, what Exeter did, colleges now do. They bring in community college players. They brought in a couple ringers, basically. One of them was brought in also to play quarterback for the football team and another one to play fullback. And they were both kind of ahead of me in the pecking order. But the guy I made really good friends with, who was already varsity the year before and who I spent the whole spring semester playing one-on-one basketball with was a guy from Harlem, who was there on scholarship, named Billy Covington. And he and I were really good friends, even though he was a year behind me in school. And he started. He was a really good player.

Lage: And was he brought in for that reason?

02-00:19:58

Graff: No, he was brought in for diversity reasons. And he ended up a lawyer at NBC. And I haven't kept up with him.

Lage: So Exeter was making some diversity efforts.

02-00:20:11

Graff: Yes.

Lage: What was your class, your high school class?

02-00:20:15

Graff: '61. So I was twenty when I graduated, which becomes relevant.

Lage: Twenty when you graduated. Now, wait. From Exeter or from—

02-00:20:27

Graff: Oh. I was seventeen. Yes, I was seventeen. And then I was twenty [when I graduated from Harvard] because I was—

Lage: Yes, because you took the three years.

02-00:20:33

Graff: The three years, that's right.

Lage: So you were class of—

02-00:20:35

Graff: '64.

Lage: —'64 at Harvard.

02-00:20:37

Graff: And that's always been a little bit of an issue because most of my friends are in '65. Although I've kept up more with my law school friends than with my college friends, for the most part, something I was hoping to remedy this year by visiting Rebecca. If my health permits it, I plan to go and reconnect. There are a lot of them in Boston and Cambridge. But the guy I traveled through Europe with at the end of college, in '64, is a psychiatrist in Boston. And my college roommate is a doctor. I think he might even be an oncologist; I'm not sure what his specialty is. But I've sort of faded from that scene. Law becomes more—

Lage: It's hard to keep up with everyone.

02-00:21:39

Graff: Yes, yes. Email makes it somewhat easier. But the hassle was that I either lost, or maybe never had, email for the college guys because I had less reason to just keep up with them.

Lage: Just to go back a little bit to family, we haven't really mentioned either political views that you were brought up with or religious.

02-00:22:06

Graff: Political views—my parents were conventional liberal Democrats, basically. It's interesting to talk about my suburb. In the 1956 election—that was Eisenhower v. Stevenson, Eisenhower's second term—we had a mock election in, I think it was sixth grade. And I graduated in '57, so it was the year before that. It would've been the fall of '56, yes. So that would've been the class of '57. Anyway, the vote in my class—I think the class had like thirty kids in it or twenty-five—was twenty-three to two.

Lage: For Eisenhower.

02-00:23:01

Graff: Yes. But kids in seventh grade don't pay much attention to politics, basically. Maybe a few do.

Lage: No. But they are voting their parents' views.

02-00:23:14

Graff: Their parents, right. The only other Democrat was {Madeleine DiGiglio?}, who I assume came from a union background. And then religious, in terms of my experience, which was none. Gary Billion, the guy who became a paraplegic, mentioned it in a recent email, saying that he and I and a handful of other kids used to have to stay in school on Tuesday afternoons for, I think a half hour after school was let out, because all the other kids went to religious school.

Lage: Huh. So they let kids out early to go to whatever religious school.

02-00:24:05

Graff: Right.

Lage: But you said it was mainly Catholic and Protestant.

02-00:24:09

Graff: Well, it was only, not mainly.

Lage: [chuckles] Only.

02-00:24:11

Graff: Right. But so I wasn't going to go to either of those. And a few other kids didn't go for whatever reasons, so we would have to hang out on campus for a little while, while the other kids went off to religious school. But it was just not a big deal, the way it seems to be now.

Lage: You mean in the school?

02-00:24:39

Graff: In the school. But I think even in the society.

Lage: But what about at home?

02-00:24:43

Graff: Oh, at home. My father, my sister describes him as an atheist; I would've described him as an agnostic. But I think she's probably closer to what was the reality than I am.

Lage: Neither of them wanted to observe the Jewish holidays?

02-00:25:02

Graff: No. And I didn't even know what the Jewish holidays were until later.

Lage: So it really wasn't mentioned as part of your—

02-00:25:08

Graff: No. Somehow, the Jewish identity was conveyed, but the religious aspects were not conveyed. And later on—

Lage: Well, what *was* conveyed?

02-00:25:21

Graff: Well, that's so hard to define, and it's also hard to remember because I've evolved somewhat since then. I think it was just— I knew that my grandparents had died, I knew about my father's travels, I knew about my stepmother's— And I knew my father had a previous wife. It was just kind of like part of what was— It's just something I knew about. And I read books.

Lage: And would you say you were Jewish?

02-00:26:13

Graff: If asked, yes. I was sort of proud enough. And there were a couple of times—I think I blocked them out rather than remembering them—where there would be a remark that I would call somebody on. I had two attributes as an athlete, and this is one that I'm very proud of, many years later. When I contacted Phil Allen and he set up and he made dinner with other friends, he told me later, or one of them told me, that he said, "Guess who's coming to town?" And they said, "Who?" And he says, "Oh, I'm not going to tell you that. I'll just give you a hint." And then they said, "Oh, what's that?" And he said, "Speed." [they laugh]

Lage: And that was enough of a hint?

02-00:27:06

Graff: Yes. I was the fastest kid in the class.

Lage: Oh, really?

02-00:27:10

Graff: Actually, I remember the day when I finally beat the fastest girl. In seventh grade, I think.

Lage: In a track race?

02-00:27:19

Graff: In an informal sandlot kind of race. [Lage laughs] Actually, many years later, a very good friend of ours, whose husband is a UC Davis professor, and I raced up near Grizzly Peak. And she was a champion track athlete in Chile. And we ran a dead heat. She's much younger than I am.

Lage: [laughs] That made you feel good. Yes.

02-00:27:47

Graff: Anyway, so how did that come up?

Lage: The Jewish question.

02-00:27:52

Graff: Yes, so with the people I knew, they knew me as Tom Graff, they didn't care. I don't think they really cared much about whether they were Catholic or Protestant, either. It was something you were, but it wasn't—

Lage: It wasn't that emphasized. And what about at Exeter? Was there any anti-Semitism there?

02-00:28:09

Graff: Well, there was more consciousness. And there was probably more anti-Semitism amongst some of the kids, but it wasn't directed at me. There were some more obvious New York Jews in my class. I would say the class was 15

percent Jewish, something like that. I'm guessing. So that's a lot of kids; that's like forty kids. But again, they had liberalized, I think, earlier than some of the other elite New England type schools. And more so than—I became conscious of Jewish quotas at colleges and that kind of thing while at Exeter.

Lage: It was talked about?

02-00:29:14

Graff: It was talked about. But by then, the Harvards and the Yales and the Princetons and the Stanfords were discarding quotas.

Lage: They'd dropped them, yes.

02-00:29:27

Graff: And in fact, I think they probably went overboard. And later on, the Asian quota issue came up. But that was much later and I was long gone from academics.

Lage: Well, did you have any sense—?

02-00:29:41

Graff: Speaking of the Asian quota, I was going to talk about that. The reason my uncle and aunt and their three kids, two daughters and a son, couldn't come to the States like my uncle from Cuba who had spent the war years in Cuba did, was because that she was Chinese.

Lage: And there was still the Chinese exclusion?

02-00:30:03

Graff: And there was still the quota, yes. Late forties. And then they got settled in Israel. I don't know if they could've come later, but they became—one of the few Chinese people in the world who speaks Hebrew.

Lage: [laughs] That's quite a combination.

02-00:30:24

Graff: How we doing timewise?

Lage: Well, it's eleven-thirty.

02-00:30:28

Graff: I'm okay to keep going a little while. What do you think?

Lage: Shall we go for another twenty minutes or so?

02-00:30:30

Graff: Sure. That's fine. So you asked about politics and religion. I don't know whether you want to complete the religion story.

Lage: Sure. Do.

02-00:30:46

Graff: I roomed with Lee Parker, who was a Protestant son of an oilman from Oklahoma.

Lage: This is at—

02-00:30:57

Graff: At Harvard.

Lage: At Harvard.

02-00:30:58

Graff: He was an Exeter classmate of mine. We became good friends. He was a runner, a track athlete. He briefly ran track at Harvard and then decided he didn't like punishing himself. He also became a scientist and then he majored in—I can't remember—chemistry or some scientific discipline. We were also perfect roommates because he would be in the lab until late at night; I would go to bed early. And then I would get up early and he would still be in bed. So we—

Lage: Crossed in the night.

02-00:31:29

Graff: Yes, we never— We bunked together, actually, in our freshman year. We stayed together the whole three years. Anyway, I had a lot of friends that were not Jewish. John Kolb, the psychiatrist, was Jewish, from Rhode Island. And his mother and father were divorced, and his mother remarried a non-Jew. So as time— by the time you're in college, you sort of start to know a few things.

Lage: Right. [laughs]

02-00:32:04

Graff: But my consciousness was still— I don't think I stepped in, went to a synagogue until— Well, I can't remember the first time I went.

We'll stay with religion a minute, but—contrary to how I described my interactions with classmates generally, and this was true somewhat of a lot of the boys, I was more of a guys guy. And my social life was, I would say, circumscribed. I don't have a full explanation of why this was the case. I think part of it was just as boys in my age group were becoming interested in girls, I went off to a monastic prep school. You know, that was before Exeter admitted girls. And we would have these sort of very stilted formal dances with girls' prep schools once, maybe twice or three times a semester. So that wasn't a way to meet girls. And then I would sort of meet them in the summertime and vacations and had kind of awkward relationships in high school.

And then I've actually got one funny story. I was invited to the senior prom at Solvay, I guess, when I was a senior in high school— I was back from prep

school. And there were kids who were eighteen by then and other kids who weren't. And we went out drinking afterwards, and the waiter came to the table, which had eight people, maybe. And he picked out the woman who had invited me, and she was sixteen at the time. Eighteen was the drinking age.

Lage: Oh, yes.

02-00:34:33

Graff: By then, I was dating. {Nancy Wrigley?} was her name. Nice girl then, nice woman later. She moved to Rochester, which was going to the big time. [Lage chuckles] But she came back for the dinner we had when I visited Syracuse. Anyway, the waiter picked her out as the youngest looking of the group, said, "How old are you?" She was sixteen at the time and eighteen was the drinking age. And she couldn't bring herself to say she was eighteen, so she said, "I'm seventeen." And that was it for drinking. [they laugh]

Lage: For the whole crowd.

02-00:35:13

Graff: Right. Probably a good thing. Anyway, so then college years, I dated sporadically that first couple of years, although— Well, first couple of years of law school. But never anyone serious. And then summer between second and third year of law school, I met the woman, the Jewish woman who was a law student at Columbia. And I was summer interning at a private law firm in San Francisco and he said—

Lage: Oh, in San Francisco?

02-00:35:56

Graff: In New York, I'm sorry. And he said, "Come to a—" It was Debevoise, Plimpton, Lyons and Gates. And the Plimpton there eventually became ambassador to the United Nations under Kennedy, I think. Yes. Anyway, we met at a mediation session at the National Labor Relations Board. She had a summer internship mediating. And we started dating. And by spring vacation—that would've been the summer of '66—by spring vacation of '67, we were married. I graduated—

Lage: And give her name.

02-00:37:05

Graff: Joan Messing Graff. She goes by Joan Graff, still. It was always somewhat amusing that my current wife does not use my name, but my first wife still does.

Lage: That is amusing.

02-00:37:27

Graff: She graduated Columbia when I graduated Harvard. I got a fellowship from Harvard University called the Frank Knox Fellow. The only real requirement of the fellowship was to enroll in a university in the British Commonwealth.

Lage: Oh. This is when you went to London.

02-00:37:47

Graff: That's when I went to London. And so I had most of my expenses paid by the fellowship. And I got a masters degree kind of on the side.

Lage: [chuckles] But you were married at that time.

02-00:37:56

Graff: I was married. Well, we actually were married, I think the end of March, went back to finish our schooling and then took off for Europe for a year, but mainly for England. But traveled the full year.

Lage: So that was the year of '67-68 that you were in London?

02-00:38:14

Graff: '67-68. And she was Jewish. Her parents were certainly more observant than mine, but very casually observant. High Holidays, and that was about it.

Lage: Yes, yes. And did you have a formal wedding, a Jewish wedding?

02-00:38:39

Graff: We were married by a civil court, family court judge. Well, no, he was a surrogate court judge. I don't know how much you— Basically, he was in charge of uncontested wills in New York City. And he was a chum of my father-in-law's. My father-in-law was a lawyer. Became one of the pioneers in condominiums, in co-ops, New York City co-ops, and became quite wealthy, I think.

Lage: Good timing, probably.

02-00:39:23

Graff: Yes. Yes. He was just starting out. He grew up pretty hardscrabble, I think in the Bronx. Both of her parents did. But they became pretty wealthy. They had an apartment on East 88th Street, between Park and Madison, overlooking the Guggenheim. And when I met— Actually, that's one of the interesting things. When I met Joan that summer, they were on vacation and they were living in the Lincoln Center Towers, Lincoln Towers, that face the river, the Hudson River. And what I remember about that was all the furniture in the living room was covered with plastic. [they laugh]

Lage: That, you weren't used to.

02-00:40:14

Graff:

No. But I picked up a little Jewish kind of connection that way. Anyway, we were in England for a year. And by then, Vietnam was going pretty heavy duty. My mother-in-law became a draft counselor. My father-in-law was a cop lawyer, also did volunteer civil rights law. He was friends with a guy named Morty Stavis, who was also tied in in the firm of one of the famous civil rights lawyers who went to Mississippi. Anyway, so he was part of the— He went to CCNY undergraduate, which was not CUNY yet, CCNY. And that was sort of a hotbed of leftwing sentiment. And then he sort of moved somewhat right from that when he went to Columbia Law School. And he was a classmate of Carl McGowan's and of Harold Leventhal's. Both of them became DC circuit judges later. And both of whom offered me clerkships, as it turned out.

Lage:

It helps to have some connection.

02-00:41:29

Graff:

Some connection. I think I would've probably gotten clerkships elsewhere, but they were both distinguished judges. Anyway, so that sort of helped push me in a Jewish direction. And then our marriage was rocky pretty much from the get-go. But we did have a child. Samantha's great. Glad it happened.

Lage:

Right.

02-00:41:54

Graff:

She was born— Well, I should describe a little maybe in a separate interview, my relations to the Selective Service.

Lage:

Yes. Maybe we'll save that for next time and talk about Vietnam and—

02-00:42:08

Graff:

Save that for next time. Okay, right. Anyway, so skipping forward, I came back and clerked for Judge McGowan.

Lage:

In DC, was this?

02-00:42:18

Graff:

In DC, in '68-69. Managed not to be drafted in that time. By the time I left the clerkship, I had basically six months to go before I turned twenty-six, which was a big deal draft-wise in those days. Anyway, I then got a job because of the intervention of Lance Liebman, who was president of the *Law Review*. This is really jumping forward. When I was on the *Law Review*—I was treasurer—he was working for [Mayor John] Lindsay in New York. And there was a vacancy in this very small office.

Lage:

Lindsay's—

02-00:43:02

Graff:

New York City's lobbying office, basically.

Lage: I see, I see.

02-00:43:05

Graff: So that's where we were through '70. And by then, I was twenty-six. We could go wherever we wanted. And we chose San Francisco and the Howard Rice law firm. And completing the religious story somewhat—we'll probably have to come back to this—we had a rocky relationship. Later on, we'll talk about my connections to Jerry Brown. Basically, the marriage collapsed. It was always rocky, but it collapsed at the end of '74, beginning of '75. Jerry Brown had just been elected governor. I was not the inner circle, but tied into his inner circle, particularly Dan Lowenstein, who took over as his chief of staff at the secretary of state's office, when the campaign got going. Dan and I were also classmates. He now teaches at UCLA law school. He's become one of the world's experts in election law. I wonder if he's in Iran. I don't know, probably not. But he's called upon often to go—

Lage: Oh, and observe foreign—

02-00:44:22

Graff: —observer foreign elections, that kind of thing. Anyway, there was a period of time when it was unclear whether I was going to get a job in Sacramento or possibly even in San Francisco. And Joan made it clear she was not moving to Sacramento. She had become a lawyer at the Equal Employment Opportunity Commission's regional office. So in January-February of '75, we separated. We didn't actually get divorced for some time after that, which is right around the time of Samantha's fourth birthday. Samantha was born in February of '71—we determined Joan was pregnant, in Reno, Nevada, with one of those tests, as we were crossing the country to join the law firm. Anyway, so then in the period '75 to '78, I kind of sowed my wild oats, which I had not done prior to my first marriage.

Lage: That's true. You didn't have that time.

02-00:45:33

Graff: And had a bunch of girlfriends. Many of them were— Well, all of them were more or less suitable, but none of them was a serious marriage prospect. And then in the late March of '78, I was introduced to my wife, Sharona Barzilay.

Lage: Would you spell her name for me?

02-00:46:04

Graff: Sharona, Sharon with an A at the end. And the last name is B-A-R-Z-I-L-A-Y. Barzilay is Hebrew for Eisenstein, basically.

Lage: Ah.

02-00:46:28

Graff: Her father changed his name. He became a very distinguished professor at Columbia, in Hebrew language and literature, basically. And I was suddenly

introduced to a much more Jewish world than I had previously encountered. And we don't have time to go through all that at this point, but you asked about religion. I ended up— well, we ended up sending our kids to day school here. And I ended up chairman of the board.

Lage: Oh, wow. Now, did you have a religious— Was it more than just the family and the kids, or—?

02-00:47:11

Graff: I'm not a theist, I think. I wouldn't call myself an atheist, either. I sort of believe in some variation of spiritual place. Like Pat Robertson would classify me as secular humanist.

Lage: But it sounds as if the religious and cultural aspects have become more important.

02-00:47:41

Graff: Oh, much more, yes. I'm steeped in the—I'm just looking around to see if the Shabbat candles were there, but Sharona puts them away. But there's a menorah here somewhere.

Lage: So do you observe the—

02-00:47:55

Graff: We came pretty much to observe Friday night dinners. We don't go to synagogue much; we go on the High Holy Days. We do observe Yom Kippur, although the last couple of years, because of my illness, I've cheated a little bit. But Sharona's observant to that extent. But she grew up kosher.

Lage: Oh, she did?

02-00:48:16

Graff: And when my in-laws would visit, we had kosher dishes separately. And so I learned a fair amount about it. I was an ignoramus when she first married me, but by their standards, the fact that I was Jewish overcame the lack of—

Lage: [laughs] The ignorance?

02-00:48:38

Graff: Right, yes.

Lage: So that was an important—

02-00:48:41

Graff: Oh, it was very important to them. It's important to Sharona, too. And it's my preference. I'd gravitated to Jewish women, for mysterious reasons to me, but I did date a lot of non-Jewish women, also.

Lage: Well, now we've skipped way ahead and I think this might be a good time to stop, and next time go back in time. We haven't really talked much about Harvard and law school.

02-00:49:10

Graff: Right. So we can finish up with universities and get to Howard, Prim briefly and the other fateful day, when Bill Butler's letter arrived. Did you read *Acorn Days*?

Lage: I read not all of it yet, but I read your section. Now, I'm going to turn this off, unless there's more.

02-00:49:36

Graff: No, that's good.

Interview 2: July 9, 2009

Begin Audio File 3 07-09-2009.mp3

Lage: Now we are recording, and this is the second session with Tom Graff, July 9, 2009. Tom, we were just reviewing what we had done last time: family, childhood, and we got you to Exeter and talked a little bit about Exeter. But I wonder, before we go on to Harvard, if you'd talk a little bit about— You talked about a tripartite identity, sort of. The Republican suburbs, the Jewish intellectual or European intellectual. Well, how did this Ivy League part fit in?

03-00:00:38

Graff: Well, I think the US prides itself on being a meritocracy, as opposed to a class-oriented society. I think looking backwards from 2009, that's probably not the case, or less the case than it ever was, if ever it was the case. I did later spend a year in England, so I got some exposure to the sort of class distinctions there. But I think there is an aristocracy in the United States, and to some degree, it's reflected in the prep schools, as well as the colleges— although I think the aristocracy has expanded or is less stratified than once it was. Anyhow, I don't know the percentages, but probably somewhere close to half—maybe not that high—of my class at Exeter came from families of distinction. Mainly in New England, but to some degree around the country. One example, one of the very good students in my class was Ben Stapleton; the airport outside Denver bears the name of the Stapleton family.

Lage: Oh, yes.

03-00:02:25

Graff: Another had the last name of Weyerhaeuser, which was a big land management timber company.

Lage: Both of these were westerners, that you've picked here.

03-00:02:38

Graff: Right. I think most people have what I think is still a somewhat correct impression that it's a New England/New York dominated school; and to some extent, that's true. But geographic diversity was one of their interests, and those people whose parents—fathers, particularly—had succeeded in business around the country were welcomed. But, I think as I said last time, I didn't detect any preferences given to those who had the more—

Lage: The more aristocratic background? But how about among the students themselves? Was there an awareness or a—

03-00:03:42

Graff: There was probably *some* awareness. Maybe I had less awareness than others. I was kind of a head-down-and-plunge-ahead kind of person. And I had friends among the aristocracy, but I also had friends— As I mentioned last time, I played basketball a lot with a scholarship student from Harlem.

Anyway, the school was very strong academically, and I took considerable advantage of that. I particularly enjoyed my senior history teacher, a fellow by the name of Henry Bragdon, who was one of the outstanding teachers there. Wrote the text for high school American history, and was a fun guy, too. And that's one thing I've thought of since the last time we talked, that even now, in my infirm old age, I'm back to reading a lot of history. And American history, in particular.

Lage: So has that meant something over the years?

03-00:05:13

Graff: I majored in American history at Harvard.

Lage: Oh, you did?

03-00:05:16

Graff: And I was thinking about sort of mentors. Never liked that word, particularly, but I think it sort of fits several people. I thought I'd mention my tutor at Harvard for, well, what I guess was junior tutorial, which was a one-on-one, year-long class, was Stanley Katz, who was an expert in American colonial history, and who later became head of one of the major national humanities organizations, I think. Not Council of the Humanities, but something like that [American Council of Learned Societies]. Another professor— well, two other professors I really glommed onto were William Langer, who taught European history—

Lage: And also had a textbook, as I remember.

03-00:06:26

Graff: Right, right. He was a great guy. My strength, I think, then was fact. I was interested in learning. And he was definitely of that school.

Lage: Yes, yes. Was he in diplomatic history?

03-00:06:44

Graff: Yes, he did a lot on Eastern Europe. He wrote kind of like a standard European history book for the nineteenth century. His specialty, I think, was the Balkans.

Lage: Did European history interest you as part of your past?

03-00:07:09

Graff: I don't know that that's the case. I think I was sort of oblivious. There had to be something going on underneath the surface, but we didn't get— There wasn't a lot of twentieth century history. It was still—

Lage: Too recent?

03-00:07:26

Graff:

This was the 1960s, right. The First World War, yes, but not much beyond that. And the third professor I appreciated a lot was Robert McCloskey, who taught constitutional law to me as an undergraduate. And I'm trying to remember— there's an interesting story here, too, especially— He was in the government department, which— it's called government at Harvard, rather than political science. And he taught from the perspective of institutions, rather than cases, as was later done in law school. Ironically, my year in England after law school, I became very good friends with his son, who later became his daughter.

Lage:

Oh! [laughs] Okay.

03-00:08:27

Graff:

One of the nationally publicized transgender transformations [from Donald to Deirdre McCloskey]. Anyway, what I always found remarkable about him, which I don't know that it's well known, was that he had the jitters.

Lage:

Now, is this the son who became the daughter, or the professor?

03-00:08:49

Graff:

The father. The father. But he had the jitters. You could tell he was like this, and yet he was a national pool champion, or billiards champion. So I guess when he focused, he could play billiards. But that wasn't what intellectually endeared him to me; I just found the subject and his teaching terrific. And then I'll also mention, while we're talking about mentors, there were two Harvard Law professors that I particularly appreciated. One was Mark DeWolfe Howe.

Lage:

Say that name again.

03-00:09:23

Graff:

Mark DeWolfe Howe, who definitely came from New England gentry. He taught American legal history, basically. And it was kind of a filler course, but I really liked him and I liked the course. And the other professor was Henry Hart, H-A-R-T, who taught kind of his own special course called Federal Courts. And he was a sick man by the time he taught me. He was shaking, basically, when he was up on the podium. But he taught an interesting, great course. And I later felt kind of— I don't know, deprived is not quite the word. But by the time it came time to get references and recommendations, both of them had died. They died quite young, Hart and Howe.

And then one last professor I'll mention. You were allowed, I think, the senior year, third year at law school, to take a class in the college or elsewhere in that university. I took a class from Stanley Hoffmann, in French history. And I don't know if you know these names, but he was a terrific teacher. And other than with Stanley Katz, and to a small degree with Mark Howe, I never had personal contact with these professors; but they were ones I appreciated a lot.

Lage: You majored in history, and then was it just predetermined you were going to law school, or how did you happen to go into law?

03-00:11:19

Graff: Well, it was pretty much predetermined. I was always interested in history. The New Deal, Roosevelt was a particular interest. Early on, it was kind of like the Civil War, which Ben picked up many years later, my son. But what stuck from that learning was that the way you might make a mark in the world was to join the US government and reform the system in a way that was beneficial to a broader number of people.

Lage: So the New Deal outlook was something you sort of absorbed—

03-00:12:13

Graff: Absolutely.

Lage: —and maybe dropped later.

03-00:12:17

Graff: Well, I was going to get to that. There's probably more stuff I could talk about.

Lage: Well, do.

03-00:12:26

Graff: At Harvard Law and Harvard College, I made a lot of good friends—particularly in Harvard Law School—whom I still have friendships with. Some of whom, they have varied politics, but those are strong friendships. Particularly once you're on *Law Review*, it's a—

Lage: Oh, that's right.

03-00:12:51

Graff: There's a sort of a small contingent. It ends up being, I don't know, forty kids out of a class of five hundred and some.

Lage: And is this the forty top kids?

03-00:13:05

Graff: Well, in those days, it was strictly grades. They didn't mess around. Later, that was considered too elitist and it ended up there was a writing competition and that sort of thing. But in my day, it was straight grades. One personal anecdote. I had a very boring job my first year summer after law school, cataloguing words. It was really a strange job.

Lage: For a law firm?

03-00:13:38

Graff: No, for a researcher. In those days, first year law students didn't go into law firms much. It was after the second year. Anyway, I had an apartment in DC,

Washington, DC, which I shared with a college friend who was going— well, I guess he went off for a year to England after that, and came back to Harvard Law School and ended up two years behind me. But I came home early one day from the job—and it was just too dreadful—and there was a letter from Harvard. I can't remember whether it was from the *Law Review* or from the school, but I think it was from the school. And it was my first-year grades. In those days, you didn't take midterms, so everything hinged on six courses.

Lage: Six final exams.

03-00:14:41

Graff: Six final exams in June. It was still a paper-chase, 3L kind of atmosphere at the law school. Which is why I went to Harvard rather than to Yale, which is—

Lage: Because why?

03-00:14:55

Graff: Because—and this relates to my family—because I wanted to be tested. My undergraduate career was good, but not outstanding.

Lage: You mean your performance or your—

03-00:15:10

Graff: Well, I got a magna cum laude, but it was not through great effort.

Lage: You didn't have to work too hard. [they laugh]

03-00:15:17

Graff: No, right. And my undergraduate thesis was kind of lame. Anyway, so I opened the environment. And the first thing that hit me was six. I was sixth in the class of five hundred and some. And I had three grades that were off the charts, pretty much. And, you know, that makes your career right there. [they laugh]

Lage: Right, it's that simple.

03-00:15:45

Graff: Contrary to what one might expect, I then went into something where that was not so relevant. And one of the great things I love about California—I think it's maybe less true now than it was, but I think it's still somewhat true—is the first question people ask you is not, where did you go to school? And people who go to community college or state college or this or that UC campus are respected for what they're doing, not so much for where they went.

Lage: Yes, yes. But you were aware that—

03-00:16:20

Graff: I was aware that this was a big deal.

Lage: —being at the top at Harvard Law School was going to do it for you.

03-00:16:26

Graff: And it harkened back to that one trimester at Exeter, when I had excelled. But I think law school exams, in particular, fit my intellectual or academic capabilities almost to a T.

Lage: You were a good test taker?

03-00:16:52

Graff: I was a good test taker. And I'm not sure why that is.

Lage: But how much of your grade was how you performed in class?

03-00:17:01

Graff: Well, none.

Lage: None, oh.

03-00:17:04

Graff: None.

Lage: I thought that the performance in classes counted for something.

03-00:17:10

Graff: Maybe later on, but not when I went. And I was very timid. The professors used to, some of them, many of them, used to call on people and then you were expected to know what was going on. And I was always petrified that I would be called on. And in fact, in my first year moot court competition, I basically froze.

Lage: So did you think you might do trial law at that time? Or maybe do some other kind of law?

03-00:17:39

Graff: Well, I don't know. This is fortunately not a therapeutic session, but I'm not sure—I had a couple phobias, one of which I've pretty much shed. Namely, public speaking. But that first year moot court, I literally couldn't speak. And one of the judges was a year ahead of me in law school, a fellow by the name of Alan Morrison, who ended up being Ralph Nader's principal lawyer in his litigation workings. So it's always been a bit of an embarrassment that that happened to me. I got better at it. And in fact, my third year in law school, I ended up speaking up in one of the classes quite a lot. A young teacher whom I liked a lot—I think he was in his first year; he's still there—named Lloyd Weinreb, teaching criminal procedure.

Lage: But apparently, that wasn't key, this ability to speak up.

03-00:18:42

Graff: Well, not—

Lage: At least for *Law Review* and—

03-00:18:43

Graff: No, it didn't matter. Didn't matter. And I got over it somewhat. And the other thing that I'm still sort of shaky about is flying. Although again, I've had to do a lot of flying and I've gotten a lot more comfortable with it. And then the other thing—this is not quite analogous but it came to mind—I wasn't such a great ladies man in those early years. And it wasn't really until after the end of my first marriage, to Joan, when I was a free man, that I experienced women in a really comfortable way. Which kind of paved the way for when I met Sharona. And it was—love at first sight is maybe a slight exaggeration, but not much. We were fixed up by good friends, who are still our good friends—although amazingly enough, they are now in the process, or maybe have divorced, thirty-odd years later. But he was a really good law school friend of mine and she was a grade school/high school friend of Sharona's. And they told each of us separately—Richard [Stone] told me and Suzanne told Sharona—that we ought to get together. Sharona was getting her PhD in biology at Rutgers, having gone as an undergraduate to Barnard, like my sister. I was back East. I still say back East.

Lage: It shows your orientation is now the West.

03-00:20:50

Graff: Yes, you can interpret it either way. I called her up and our first date— She had this really tinny old jalopy that was burning gas like crazy. I think she was getting like six miles to the gallon. Burning oil like crazy and using a lot of gas. Anyway, we took two spins around the reservoir in Central Park. That was our bonding experience. And she told Suzanne the next day, "I'm going to marry this man." [laughs]

Lage: Oh, my goodness!

03-00:21:28

Graff: And I knew this was a big deal. In fact, it was a month or so, a month and a half before my father died, so they never met. He was in Hawaii, in a hospital for the most part, during that time. But I did get to see him once before he died. And I told him I'd met somebody that I thought might be the one— I can't remember how I phrased it. So therefore, my two younger kids, of course, never met their grandparents on their father's side. They met my stepmother. And gee, that's a little bit of a story, too. My father died in May of 1978. And I guess it was December of '81— Well, Sharona and I got married at the end of '80. We met in '78; spring of '79, I taught a semester at Harvard Law School, on leave from EDF. I took two leaves from EDF over the years. One was to work on Jerry Brown's transition when he became governor in late '74; and then for the spring semester in '79, I taught at Harvard. So by that, I can tell you the sequence.

Lage: So now you could be closer to Sharona.

03-00:22:57

Graff: I was closer. And the sequence, since we were bicoastal— Sharona came out and did a backpacking trip in Colorado in the summer of '78. And then she came out again at Thanksgiving time. And that was quite an experience. One interesting thing happened in the backpacking trip. We were in the San Juans, in southwest Colorado, on a trip run by a doctor from northwest New Mexico. I don't think it was Gallup. What else is a big town, northwest New Mexico? Maybe it was Gallup, I don't know. He was a friend of a good friend of ours here, Bill Turner. By the way, I should mention Bill and Thelton Henderson— do you know that name?

Lage: Yes, yes.

03-00:23:57

Graff: —and a couple of other fairly prominent public interest lawyers started a poker game in the early seventies, and we're still at it, thirty-five years later.

Lage: And you're part of that?

03-00:24:07

Graff: Yes. [laughs]

Lage: My goodness.

03-00:24:10

Graff: And Thelton is just a fabulous guy. And Bill's a terrific guy, also. Anyway, Bill was a big backpacker and really introduced me to backpacking. So we did a backpack trip that summer. And then on Thanksgiving, Sharona came out and was introduced to California for the first time. And we were invited to a kind of new age party in Inverness, the host of which was a fellow named Armin Rosencranz. You know that name?

Lage: Mm-mm.

03-00:24:42

Graff: He's very much a Stanford person, as opposed to Berkeley. But the big kind of formal—for this crowd—activity for Thanksgiving was to stand around a big circle in a field, and everyone was supposed to say what they were thankful for or what was their favorite Thanksgiving. And Sharona, who's a shy person, just was kind of totally freaked by that. [they laugh]

Lage: It's so California. So Marin.

03-00:25:16

Graff: Right. Anyway, the best part of that Thanksgiving was our dog Simon, in the middle of all this, kind of broke through the ranks and headed for this big pot of succotash [Lage laughs] that was in the middle of the—

Lage: Of the circle?

03-00:25:32

Graff: —of the circle. [laughs] Anyway, that's her introduction to California.

Lage: Did she meet your daughter at this time?

03-00:25:44

Graff: She must've, yes. That was late '78. Two months later, I went to Boston, to Cambridge. And I rented this apartment that had this tiny bed. So we used to sleep on this single bed, basically. Which was cozy and fine for the times and for our circumstances. The woman who rented that to us was a descendant of Von Humboldt. Do you know that name?

Lage: Humboldt the explorer?

03-00:26:20

Graff: Right.

Lage: Oh, my.

03-00:26:24

Graff: So that took us to the middle of '79. And then we were bicoastal again for five, six months. And then Sharona moved out at the end of '79, as she was completing her doctorate. Her doctorate was in the homing behavior of—I don't know what the exact classification is—but of wood turtles, land-based turtles. She also studied sea turtles during the course of her graduate work. And she had this great little trailer in the Adirondacks, and she had what now probably would seem like primitive equipment. But she affixed monitors to these turtles. And then every day throughout the summer, she would monitor where they went. And her thesis was on the homing behavior of—

Lage: The turtles.

03-00:27:26

Graff: Yes, the wood turtles. But it was not a good time for someone with that kind of a PhD. Had she chosen biochemistry or molecular and cell biology—

Lage: Yes, they were getting into the molecular then.

03-00:27:48

Graff: But we determined that she would move out with me. This was slightly scandalous, from her parents' point of view. But she moved out in December of '79. And I had an apartment that was a big, cozy, really quite nice apartment on Florio Street, just above the corner of College and Claremont in North Oakland. But it only had one bedroom. And that wouldn't work when I would have Samantha on the weekends. I might mention, I should mention that— And this connects somewhat to the Jerry Brown transition; I think I touched on this.

Lage: You touched on it, but we'll want to go into it when—

03-00:28:33

Graff: Yes. Right.

Lage: You mentioned about Sacramento.

03-00:28:37

Graff: Right, right. So the idea of moving to Sacramento was just not in the cards. Well, Joan and I separated in, I think early February, '75—Samantha was born in February—before her fourth birthday. And I originally moved to a place for a couple months on Coronado Street, and then I found this really nice one bedroom. But eventually, before too long, Joan moved from our house in Kensington to an apartment in San Francisco. And we worked out—informally, really. Later we had a divorce decree, but it was basically negotiated. So I basically had Samantha weekends or ultimately, it was mostly alternate weekends. And when she came to that apartment, she would sleep in my bed and I'd sleep on the coach. But that wasn't going to work with another person.

Lage: Yes, right.

03-00:29:47

Graff: So we went to a New Years Eve party, local New Years Eve party. And the main thing we were interested in was asking around about who knew of a nice place to live. And one of the people at the party, a woman by the name of Jessica Pers, P- E-R-S, who's become a well known and respected attorney—She was at the Heller firm, which is now just defunct. In fact, I never asked what happened to her when the firm split up. But she recommended a house around the corner from us on Manoa. So—no, it was New Years Day, I think it was, New Years day—we went and knocked on the door. And the people let us in. And they said the man of the house was a lawyer there, about to move to Hong Kong. And the house was clearly inappropriate; it was a much bigger house than we could afford or wanted. But just happenstance, Sharona noticed biology books on the dining room table. So she asked, "What are these books?" Turns out this guy's wife was the biology teacher at College Prep, and was moving away. And it was three weeks before the second semester was going to start.

Lage: So did that start Sharona's career at College Prep?

03-00:31:29

Graff: It did. And she's never left it.

Lage: Oh, my.

03-00:31:33

Graff: I mean, she's done different things there, but for many years, she taught biology. And it turned out to be a great place for a dual career.

Lage: You mean mother and—

03-00:31:46

Graff: Mother and teacher. Her day ended more or less when our kids' day ended, particularly— They went to Tehiyah [Day School], which is a ways away, and they would either car pool back or take the school bus. Or as soon as they could do it, the city bus, the seven. And she would pick them up after work, basically. So that's how she fell into her job.

Lage: But you didn't take that house.

03-00:32:15

Graff: We didn't take the house. We found a much smaller house in Piedmont, on McNamara's block.

Lage: Oh, that's right. You told me about that.

03-00:32:23

Graff: Actually, it was two houses; we found one. We lived there a couple of years. We were married in December of 1980, in New York, at a wedding that, as Sharona puts it, was her mother's wedding. [they laugh] She said she wanted a private wedding at their house, a minimal number of people; and her mother moved it to a hotel with larger numbers. I actually didn't mind it. There were some interesting things at that wedding. My father-in-law, who never missed a microphone that he could speak into—

Lage: [laughs] Was he a lawyer, also?

03-00:33:09

Graff: No, he was a distinguished professor at Columbia, in Hebrew language and literature.

Lage: Oh, that's right. You told me that.

03-00:33:15

Graff: Right. Anyway, he launched a philosophical—I was going to use the word diatribe; it lapsed into a diatribe—about the condition of the Jews and the Holocaust and that basically— he never used these words, but the sinfulness of Jews that didn't observe the commandments—which didn't sit that well with my family. By then, my father had died, but my stepmother and sister and brother-in-law were there, and their daughters.

Lage: Do you think he was directing that at you?

03-00:33:50

Graff: Who knows? He got carried away. And I think his wife, Helly, who probably believed the same things, knew it was not the thing to say at a wedding. And he talked a lot about the Holocaust at the wedding. Anyway, I became kind of very good friends with them, as I took on more Jewish coloration over the years. And our kids went to a Jewish school, Jewish day school. I went on the board and eventually became president for a year. That was probably a factor.

And since I had occasion frequently, in the eighties and nineties, to go east for meetings—either substantive meetings or organizational meetings or both—I would always stay at their place when I was in New York. So I got to know them very well. And they would come out here, too, particularly after our— Well, we were married December '80, and Ben was born February '82. So we didn't waste a lot of time. And then Rebecca was born two years and four months later. And they loved the grandkids.

Lage: Did they have other children?

03-00:35:18

Graff: They had one, a son, an older brother, who is now a doctor, a Kaiser doctor in Atlanta, Georgia. And extremely capable. Bright guy. He's had his travails in life. He went to Israel for a time, met a woman, a Jewish woman whose parents were living in Brazil. In fact, in Ben's first year life, he became a world traveler. We went to Israel for Josh and Sara's wedding. And then essentially, a couple days after we returned from that trip, we flew to Hawaii, to Maui, because my mother had been diagnosed the previous December with colon cancer, and was told she had six months to live. So my sister and her family and Sharona and Samantha and I basically planned to fly to Hawaii to bid my mother goodbye. And eighteen years later— [laughs]

Lage: Oh, she did okay.

03-00:36:44

Graff: She eventually expired, January 5, 2000, which is my father's birthday.

Lage: Oh, my.

03-00:36:50

Graff: That would've been his ninety-ninth birthday. And I, to this day, don't understand whether she was misdiagnosed— She took chemotherapy, hated it, and said, "This isn't worth my living," so she quit.

Lage: And then it just disappeared?

03-00:37:11

Graff: Well, it disappeared and came back. I can't remember, maybe five years later. But they caught it much earlier. My mother was a very stubborn woman, and she let herself get very sick before she finally consulted—

Lage: And here she is, a doctor.

03-00:37:27

Graff: Right. Yes, she was not good at intrafamily medicine.

Lage: Yes, right. [laughs]

03-00:37:39

Graff: But they operated on her both times. And I guess contrary to— I guess they got it all, or what was left.

Lage: At her age, maybe—

03-00:37:52

Graff: At her age, yes. And she was old enough. Anyway, she lived a comfortable life, had a lot of friends there. And once a year, she would— Well, in the years when my dad was alive, I used to go to Hawaii. In fact, one of my greatest outdoor adventures was hiking from the top of the Haleakala Crater down to the beach, which you can do. In theory, you have to arrange a permit from the National Park Service. But I kind of pulled rank and said, “Environmental Defense Fund,” and he said, you know, “Work with me, and there’ll be vacancies while you’re here.”

Lage: Who is he?

03-00:38:40

Graff: He was the superintendent at the park. And it’s just a spectacular experience.

Lage: Which island is this? Hawaii?

03-00:38:51

Graff: Maui. Maui has the one big volcano, and then it has the West Maui Mountains that are always enshrouded in fog, in the clouds. The big island has the famous craters, Mauna Loa and Mauna Kea. And the Geological Survey is a big operation there. But Haleakala was basically a tourist attraction. And most people just drive up and look over into the crater. So I walked down into the crater, took two days, slept—

Lage: Oh, *into* the crater.

03-00:39:27

Graff: Right. It was from the top of the valley, to the seashore. And you walk basically west to east. And halfway down, 5,000 feet rather than 10,000, you start getting vegetation. And by the time you hit the ocean, it’s a jungle. So it’s just a—

Lage: Wonderful.

03-00:39:52

Graff: Yes. I strained my legs walking downhill, but it was great, it was beautiful. Anyway, so I think that was in the period when I was single, that I visited my mother, when I did that. After the family trip in ’82, I think the only times I went to Hawaii was when my mother was sick. And then shortly— Well, just to finish that story off, she was 89, I guess, when— It was Labor Day weekend and she was supposed to meet a friend, someone for lunch, and she didn’t show up. So they finally broke into her apartment. It turned out she had

had either a heart attack or a stroke, and had fallen between the beds and couldn't rouse herself. So she was taken to the hospital first, and then she went to an old-age home. So I guess that was the fall of '99. So she was 91 already. And she was still driving, which is another whole story, but I won't bore you with that one. Anyway, so we took turns. Samantha went, I went, my sister went to visit her in the hospital and then in the nursing home. And then when she was sort of capable of it, I flew to Hawaii and accompanied her, with an attendant, on flights from there to San Francisco, where she said goodbye to her brother, the younger brother who had been in South Africa and moved to the States, a complicated story—and her two nephews, who lived in the area. We met in the— Well, it's now changed physically, but the sort of middle area, United Airlines and—

Lage: Oh, and just very quickly—

03-00:42:15

Graff: And just said goodbyes, yes. And then we continued on. Took the night flight to Newark and were met by my sister and brother-in-law, and they took her to, I don't know, an elderly home in—

Lage: Oh, to be closer.

03-00:42:33

Graff: To be closer. By then, they were retired. We had always thought that my mother would move to California, because the weather is nicer. But given the circumstances, she actually said—and I think we would've come to the same conclusion—that it made more sense for her to go to New Jersey. So by then it was late October, and she died in January. She didn't really adjust. And she was old.

Lage: Yes, yes. And was there any development of closeness with your kids?

03-00:43:02

Graff: Almost none.

Lage: Sounds like a strained relationship to the end, from your sister's memoirs.

03-00:43:05

Graff: Yes. Yes, no. If you asked them, they would just roll their eyes. There's actually one funny story. It wasn't so funny at the time. I was going to say, she would come once a year.

Lage: Oh, she did come once a year.

03-00:43:19

Graff: She came once a year, and she would stay here. It was always around her birthday, which was one day later than her granddaughter, Deborah's, birthday, May 27 and 28. Deborah, by the way, distinguished herself in her

career— As I might have mentioned, this is Claudia’s daughter, who got a MacArthur for—

Lage: Oh, you didn’t mention that.

03-00:43:39

Graff: I haven’t mentioned that? For really remarkable good works in education. Anyway, she would always come to us for a few days before that, and then be in Teaneck, New Jersey for the birthdays. And I think this might have been in May. Wouldn’t have been in May because Sharona would’ve still been in school, so this would’ve been a different time, in the summertime. We took my mother to Yosemite and stayed in one of the hotels, lodges outside the park, just outside the park, on the south side of the park near Badger. And this is a classic story about my mother. I apologize to her for telling it. [Lage laughs] We had adjoining rooms. And our room did not have a refrigerator, but hers did. And so we put I think club soda or bubbly water of some sort, several of them, in her freezer. And then we were sitting in our room. And we said to Ben, who was probably six or eight at the time, “Can you go get the bubbly water for us?” We must’ve just been on a hike or whatever. And he went in and he pulled the— But she had put the bubbly water, instead of putting it in the fridge, had put it in the freezer. And it exploded. [laughs] And he got pretty badly cut. I mean, it cut—

Lage: Ooh! The glass was—

03-00:45:29

Graff: The glass. Because in those days, it was glass; now it’s plastic. If you go to Costco, you get them in plastic.

Lage: Oh, dear.

03-00:45:37

Graff: Anyway, she blamed him. [laughs] He should’ve been more careful. And it was difficult for us to hold our tongues, but we just— We didn’t say anything. We patched him up and he was good to go, eventually. Anyway.

Lage: Well, that gives a flavor.

03-00:46:01

Graff: Flavor of the relationships, yes.

Lage: Anyway, now again, we’ve gone way ahead. I want to go back to— [laughs]

03-00:46:11

Graff: Yes, in terms of my later development, I probably mentioned this, but I’ll emphasize that I loved my father. He was extremely solicitous of me and of my sister. He contributed, certainly emotionally and to a degree financially, to my excellent education. He took care of my mother, which was a big part of the workings of the household. She took care of him, too. I will grant her that.

But I always felt awkward about his not working. I remember as a kid, playing in the schoolyard. And he would walk by as part of his routine. Now, I just assumed— It's interesting, it didn't occur to me at that time; and I'm not sure my sister is right about this, but she says, "He probably walked by the schoolyard to see you playing." But to me, he was just in the way. Why was he there? There were no other fathers walking around the block.

Lage: They were all off at their jobs, commuting to work somewhere.

03-00:47:42

Graff: So I always— I think I was fearful, but I was also determined that I wouldn't end up like my father. And as I said, I did very well academically. But once I had gotten back— I graduated Harvard Law School at the age of twenty-three, twenty-three-and-a-half. And in those days, if you didn't have deferments, you were subject to the draft until you were twenty-six. So my first year after law school, I had this Harvard fellowship, and I applied for a student deferment, because I was a student at the University of London, and the LSE, London School of Economics, was the part of the University of London where I was enrolled. And basically, I never got a reclassification from my—

Lage: Oh, from your student deferment?

03-00:48:48

Graff: I had been a student, had been deferred until very late in like April of the school year. And I was classified 1-A. I then applied for a deferment for my next position, which was as a clerk to Judge Carl McGowan on the DC Circuit. Another mentor, terrific man. Had been Adlai Stevenson's chief of staff. Had barely been nominated by Kennedy, because he'd ended up as an employer's lawyer in labor cases. But he was a friend of and was recommended by Arthur Goldberg, who was by then a Supreme Court justice. And so he got that appointment. That would've been in the early sixties. I clerked for him in the—

Lage: And what was his appointment to, exactly?

03-00:49:54

Graff: The DC Circuit. And I had actually signed up with him for the following year, before I left for England. So I knew that was what I was going to do. So I applied again for a deferment, and again, I heard nothing for like seven, eight months. And now I was getting nervous because I had no other deferment-eligible job lined up.

Lage: And you had one more year.

03-00:50:32

Graff: Well, yes, six months or so. It was also complicated because you could kind of like string it out thirty days to ask for a personal appearance and sixty days to file and appeal. A lot of people were pretty cagey about how they worked

their way around the draft. Anyway, I applied for an occupational deferment, saying I was serving the public interest because I was going to be a lobbyist for New York City and they helped a lot of poor people. At that time, that did not sit well with my draft board in Syracuse. So I followed the rules. I filed an appeal; that took a couple months. Then I asked for a personal appearance. And it was really my first post-law school oral argument. And what I remember, the draft board was— I think it was three, might've been five people serving their country.

Lage: Just local citizens, right?

03-00:51:53

Graff: Locals, yes. Yes. By the way, there's a funny story I'll get to in a minute. So I gave what I thought was an eloquent speech about how I really wasn't suitable draft material, as an almost twenty-six-year-old and serving the public good and da-da-da-da-da. And then I stopped and there was absolute silence. I mean literal silence. [Lage laughs] And I tried, I said, "I'd be happy to answer any questions you might have or any clarifications of things I didn't present clearly." And again, absolute silence. And then I think a clerk sort of said, "Thank you Mr. Graff. That'll be it for today." And I was ushered out of the room. This was, I think, in November and my birthday's in January. And so I waited around. Time went. And then in December, there was the first lottery. I don't know if you remember the lottery.

Lage: Well, I do, but I'm trying to think—

03-00:53:01

Graff: So that would've been—

Lage: If you don't have a deferment, that means you might be called by the lottery.

03-00:53:04

Graff: Right, right. So I got a good number. Turns out that the person pulling the ping-pong balls out of the wheel was the father of one of my prep school roommates. He was a congressman from Utica, New York, on the Armed Services Committee, a Republican. And Lyndon Johnson, who by then was president, had the good sense to ask a Republican congressman to pull the ping-pong balls. But I got a very high number, so I wasn't going to be called at that point.

Lage: So you didn't have to worry about what the draft—

03-00:53:47

Graff: Whether I was going to be called in the next month. And then I was twenty-six and I was home free.

Lage: Now, did you ever hear from the draft board? They didn't grant you the—

03-00:53:53

Graff: I think I still have a 1-A.

Lage: That's quite a story. Well, this is the only thing that you've said that shows this background of the Vietnam War that's going on. Did that impact Harvard Law or the later—

03-00:54:11

Graff: My views on the war evolved. Well, first of all, when it started, it was pretty small potatoes under Kennedy. And it expanded during my law school years, really, but I was immune because of my student deferment. And then over the years, the deferments were squeezed. And my original thought was, you know, I would start a family once the end of student deferments loomed, and then that would be it. But that avenue was closed off and no longer was available, by the time I graduated law school. And I'm not sure that would've been such a great idea. Joan's and my marriage was never the best. Three years after that—after England, after clerkship—we conceived a baby, so it was good enough to do that. Samantha's a great young woman now, and not so young. But that was terrific and worth the marriage, in any event, whatever else went on there.

So January 20, 1970, by then Nixon was president. Oh, I should say the last thing that I had done, because I was unsure I was going to get a deferment, I had signed up for a commission in the Coast Guard. A guy a year behind me in law school, named Jerry Goldman, had figured it out, and he went right to the Coast Guard after law school. And the Coast Guard, unlike the other services, is not in the Pentagon but is in—or at least was in—the Department of Transportation. And so he got a job in the general counsel's office of the Department of Transportation, but as a Coast Guard officer. And I thought, this sounds a lot better than Vietnam. I was around a lot of people who were leaving for Canada or coming up with medical deferments or psychiatric deferments or whatever could work.

Lage: That was a main concern of young men at that time.

03-00:57:02

Graff: Yes, yes. Right, and very much so. But it was a stratified society. Very few of my peers ended up in the military. Some went to the military early and then became law students. One of my Exeter classmates died in Vietnam. He was the grandson of General Pershing, who was the leader of the armed services in the First World War. And there were kids from my grade school who died in Vietnam, or who were severely injured or whatever. One I remember I played basketball with. But if I was going to have a choice, general counsel's office of DOT seemed a lot better than the fields of Vietnam. Anyway, so I got—

Lage: You got the commission.

03-00:58:12

Graff: Well, I didn't get the commission, I got a letter from the Coast Guard saying, you're in. So that was my fallback.

Lage: Oh, you didn't have to accept it.

03-00:58:22

Graff: Well, I sort of had accepted it, but I hadn't been commissioned. And I told the draft board that, and that didn't influence them. I assume if I had gotten the commission, that would've been enough. But John Volpe—you remember that name?—was governor—

Lage: I do.

03-00:58:42

Graff: —of Massachusetts, was appointed Secretary of Transportation by Nixon. And it took him a long time to—took him or the administration, I'm not sure which—a long time to appoint a general counsel. And the Coast Guard, seeing its opportunity, pulled the position away from the general counsel's office, back into their own ranks. And I've never really inquired as to whether that was kind of okay with Volpe and the rest of the gang or was part of the sort of changing mores of government in Washington. Anyway, I got a letter from the Coast Guard saying, "Since we can't give you the position that we promised you, you can still apply for and receive a Coast Guard position somewhere else in the country or overseas." And I'm guessing not a lot of Coast Guard personnel ended up in Vietnam or were at risk.

Lage: I need to stop this and change the tape, unless you just have a just a sentence to add.

03-01:00:06

Graff: No, there's a little more to the story.

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Lage: —on tape four. Okay.

04-00:00:03

Graff: Okay. So I briefly investigated another office that was considered prestigious at the time, which was the General Counsel's Office of the Air Force. But I decided to risk figuring out a way to get through those last six months, using whatever mechanisms I could.

Lage: It's an interesting tale of what the college crowd went through.

04-00:00:37

Graff: Well, it was harder for kids two, three years younger, I think. Anyway, as I mentioned earlier, I skated through, luckily. So summer of 1970—

Lage: Tell me more about Washington. The last thing you said about government was the New Deal outlook. You had been thinking that you want to join government. Did the years in Washington affect you?

04-00:01:05

Graff: Well, one of the interesting things— I remember two things about my clerkship with Judge McGowan. I remember more than two things, but two that I'll mention. One is the last game of the 1968 World Series, which we watched on television. And I, for one reason or another, was a big Detroit Tigers fan. That was the year that the Tigers and the Cardinals played in the World Series and went down to the seventh game. I think it was Curt Flood, for St. Louis, who hit the long drive to center field that was run down by Jim Northrup, and the Tigers won. And contrary to form— You know, Denny McLain won thirty games that year for Detroit.

Lage: I *don't* know. [laughs]

04-00:02:02

Graff: But it was Mickey Lolich who won three games in the World Series for the Tigers. And I want to say Kirk Gibson. Well, it was Gibson, Bob Gibson was this fabulous pitcher for St. Louis. And he beat McLain in a couple of the match-ups. But they brought Lolich back for the seventh game, and the Tigers won. Anyway, I remember that distinctly. That was not what we did every day. [Lage laughs] And then McGowan tried to help me with the draft board. But he was a judge and he could affirm that I was working for him, but he wasn't going to say, please give this person a deferment. But one of the kind of odd developments of that year—and surely, my career would've taken a very different course—was that late that year—

Lage: That first year?

04-00:03:06

Graff: —'68-69, the judge in the next chambers, over in the DC Circuit, Warren Burger, was nominated by Nixon to be Chief Justice of the Supreme Court. And he was going to go just up the hill to the Supreme Court, and he didn't have clerks. And so McGowan recommended me to him to be a Supreme Court clerk. And I think Burger would've taken me—and I would've taken him, I'm embarrassed to say—but my draft status made him too nervous. And so I did not become a Supreme Court clerk.

Lage: Because you'd think that would've been very helpful with your draft board.

04-00:03:53

Graff: Well, but it would've required him to speak up for me, I think. And he didn't want to do that.

Lage: Interesting. And what about the time with Lindsay, with the office of Lindsay?

04-00:04:06

Graff: Well, that was interesting, too. Let me just say I made some friends. There was an increasing radicalization among the lawyers and law students that I knew at that time.

Lage: Yes. Well, let's talk about that.

04-00:04:25

Graff: Although some of them swung back, a couple that are interesting. One was Jim Woolsey, who eventually became CIA director, under the Republicans, but has now become a big advocate for tackling global warming. Another was Walter Slocombe, who was the year behind me in law school, but caught up to me because of my England year, clerked for one of the Supreme Court justices. And he ended up in one of the top policy jobs in the Pentagon.

Lage: So these are people you knew in Washington from law school.

04-00:05:07

Graff: Knew in Washington. Well, Walt, I knew in law school. He was a brilliant guy.

Lage: And what caused the radicalization of your lawyer friends? The war, or—?

04-00:05:16

Graff: By the war, by civil rights, [Robert] Kennedy and— Well, first McCarthy, and then Kennedy ran for president in '68. Oh, that was the other thing, the '68 Democratic convention took place that year. And McGowan, sort of contrary to expectation, was friendly with Richard Daley, the mayor of Chicago. So when things erupted in Chicago, he was caught— circumspect, let's say. But those of us who were sort of Kennedy or McCarthy— There were a lots of debates about Kennedy or McCarthy among my crowd, but it clearly wasn't Johnson and Humphrey. At least at the time of the convention. The guy who had been my first-year roommate in law school, John Schmidt, who came from Chicago, was the chief lawyer for the McCarthy forces in the delicate battles that took place at the convention. He later kind of made his peace with the Daleys and became Bill Daley's number two as trade rep. I might've mentioned that earlier. But those were—

Lage: People were affected by the times.

04-00:06:47

Graff: Were affected, yes, by the times, sure.

Lage: And were you yourself?

04-00:06:51

Graff: Yes. Well, I was fearful I was going to get killed. It's pretty simple. [laughs]

Lage: Yes. In the draft.

04-00:06:57

Graff: Well, if I was drafted and sent to Vietnam, sure.

Lage: But in terms of protesting or any of that, is that something lawyers did in Washington?

04-00:07:06

Graff: I did a little bit of that. I didn't protest. In the '68 election— This was kind of silly, in a way. Maybe it was in the primary. But anyway, there was a big organization of lawyers to monitor the polls. And so I was on call, in case there was trouble at the polls. So that isn't protesting. But as a clerk, I wasn't—It would have been inappropriate for me to be going to them.

But I did go to one big protest. That was five years earlier. I was at the March in Washington, where King [Rev. Martin Luther King, Jr.] gave his famous speech. And in fact, I went there with my cousin Robert, or with his family. And I think René, who wrote the book that I mentioned last time, when— Now, we had no idea that there was going to be a big-time speech. And the place was mobbed. So we kind of were on the fringes.

Lage: Maybe you couldn't even hear.

04-00:08:22

Graff: We heard, sort of through the loud speakers, but we were picnicking, basically. [they laugh] Just to add to the numbers.

Lage: Right. So you had some interest in civil rights.

04-00:08:32

Graff: Yes, yes.

Lage: Was there talk in those years—or when did it develop—about public interest law or environment?

04-00:08:39

Graff: Yes. Well, environment—

Lage: We haven't mentioned the word environment.

04-00:08:43

Graff: That comes later. Johnson—I think it was Johnson, as part of his civil rights program—created the Neighborhood Legal Services Program. And some of my classmates ended up in Neighborhood Legal Services. The most notable of which was Dan Lowenstein. And Dan, after his stint in Modesto, at the Neighborhood Legal Services office there, he married a Japanese American woman from Watsonville. My first visit to California was to go to his wedding. He ended up as staff to Jerry Brown, which is a connection that—

Lage: We're going to get to in due time.

04-00:09:35

Graff: Get to later. And Dan then, eventually, well, he wrote the proposition that created the Fair Political Practices Commission [Proposition 9, in 1974]. And then Jerry Brown ran to be secretary of state, and became identified with political reform. I've jumped ahead from the civil rights stuff. But Dan was at the Neighborhood Legal Services, a couple of others. Dan had written a law school note—oh, I wanted to mention this—had written a law school note on his experiences. He and another classmate of mine were sent off, with Harvard money, to investigate the beginnings of legal services, in the summer of '66.

Lage: Of this type of legal services, public interest law?

04-00:10:41

Graff: Right, right. And then after law school, he went to legal services himself. The other guy, Mike Waggoner, ended up a professor at the University of Colorado Law School. My classmates in the *Law Review* sort of broke into three crowds: those that went to academia, maybe a third of them; those that went to law firms, eventually; and me. [laughs] I ended up in a nonprofit.

Lage: Were you the only one that ended up in a nonprofit?

04-00:11:17

Graff: As far as I know, among the—

Lage: Among the *Law Review*—?

04-00:11:22

Graff: Right.

Lage: But there were others from Harvard?

04-00:11:26

Graff: Others who did one or the other public interest thing. One of my good friends, Lew Kaden—and Mike Schwartz, who was also a good friend—became staff to Bobby Kennedy in the '68 campaign. Lew ran for Congress in New Jersey and then eventually ended up a very senior executive at Citigroup.

Lage: That's quite a trajectory.

04-00:11:54

Graff: And got a big bonus recently. [laughs] He and Lew and Lance Liebman, who was president of the *Law Review* my year, and then eventually taught at Harvard, taught at Columbia, became dean of Columbia Law School, and is now the head of the American Law Institute. We're all kind of a little clique from the law school.

Lage: You still stay in touch with this group?

04-00:12:19

Graff: Yes, with all three of those guys.

Lage:

When you were at Harvard, or in those later years, was there an awareness of the sort of beginnings of environmental law? Or was this something that was just off the—

04-00:12:35

Graff: It was off radar. There certainly weren't any courses in it. So jumping back to the summer— well, to the spring and summer of 1970. I was working for Lindsay. The guy that had been my boss, Peter Tufo left. He was replaced by somebody named John Koskinen, who much later became the president's appointee to make sure that the computers of the world didn't crash in the year 2000. Well, actually, I replaced John; that's more accurate. I overlapped with him a little bit. But then Peter was replaced by somebody else. And during that time, Lindsay made the transition from Republican to Independent to Democrat.

Lage:

While you were on his staff.

04-00:13:37

Graff: While I was on his staff. But I knew that was not a permanent-type job. And so I applied to law firms. By then, I was twenty-six. And I didn't want to stay in Washington, which had become a Republican town. I didn't want to go to New York, because my in-laws were there and that didn't make sense. I didn't want to go back to Boston because it was too Harvard oriented. And so the West Coast beckoned. And I interviewed both in L.A. and here.

Lage:

And your only trip to the West Coast had been—

04-00:14:20

Graff: Well, on my first trip to the West Coast, I think I interviewed, as well, but it was to go to Dan's wedding at the Watsonville Buddhist church. And Dan's background is interesting. He was German Jewry. He wasn't the Eastern European that dominates the American Jewish scene. And he was conservative politically. He was for Goldwater, and then he became a legal services lawyer. It's an odd combination. Married a Japanese woman, of Japanese descent.

Anyway, so I went to the wedding. And then I think I visited Howard, Prim. And I think I also visited a couple of law firms in L.A., Munger Tolles, I think, and what's the other one? They were all similar, in that they were not the big firms, the O'Melvenys or Pillsburys, but kind of like the young and up-and-coming firms. Anyway, I picked San Francisco, really. But Howard, Prim was a terrific firm. And interestingly, they took too many new lawyers that year, and so there wasn't really enough to do my year there. So they were happy to have me do pro bono work. And I didn't work that hard; I played a lot of basketball. [they laugh]

Lage: This is not what I think of as a young lawyer starting out.

04-00:16:02

Graff: Right. No, it changed a lot over the years. And we would register hours. I still have my date book, which has numbers in it.

Lage: Where you wrote down chargeable hours.

04-00:16:19

Graff: Wrote chargeable hours, right. And one of the reasons—not the major one, but *a* reason—that I was attracted to EDF a year later, or less than a year later, was that there would not be billable hours. You were working on projects.

Lage: What kind of law were you working on?

04-00:16:40

Graff: Whatever happened. It was an odd firm. Henry Howard, the first named partner, was a tax lawyer. Wayne Prim was next on the masthead, was more businessman than a lawyer. And in fact, was major owner of the logging firm that was eventually bought by [Charles] Hurwitz and turned into—

Lage: Pacific Lumber?

04-00:17:08

Graff: That's right, Pacific Lumber. But I think he got out before it became controversial. Smith—how should I say this?—Smith was a terrifically nice man, but he had a drinking problem, basically. Left the firm some time after I did. So really, the first lawyer—Henry Howard was at the tail end of his career already—was Denny Rice, who—you might recognize the name—was a Marin County supervisor for a number of years. Ran for Congress when Lynn Woolsey was elected, but didn't get elected. And Downs was a plaintiffs antitrust lawyer. The others were much more corporate. Eventually, the firm changed its name to Howard, Rice, Nemerovski, Canady, Pollak and Robertson. They've dropped the Robertson since then. Stu Pollak was a Warren clerk. Nemerovski was a very energetic, very politically plugged-in lawyer. He was very much involved in school desegregation in San Francisco. And I think he was—I can't remember, I should remember, whether he was allied with Alioto or opposed to him. But I think he was on the integrationist's side in those battles.

One thing I remember, I used to walk by Nemerovski's office all the time. And he used to have on his—right where his sec—there used to be secretaries. Behind her desk was a big, long list of people he had to call or things he had to do. And I've sort of adopted that as a method of kind of checking off things, of what needed to be done. Anyway, I think I did a number of things. I was appointed by the Ninth Circuit to an en banc habeas corpus appeal. So I did a fairly lengthy brief. Judge [Alfonzo] Zirpoli was the trial judge. And the issue had to do with— Well, what's the right term? It's

not retroactivity. But it was whether a new rule in criminal jurisprudence, a procedural rule, could—retroactivity—would undercut a prior conviction. And I argued that it would, on behalf of my client. And there was a pretty big split in the Ninth Circuit, but they ended up saying no, that the ruling was only prospective, not retroactive.

But that does remind me. One other connection, aside from the Lowenstein/Brown one, that served me well and otherwise—And interestingly, that year it was not connected to the law firm, but was connected to someone who was a college friend of my wife's, who was the Associated Press reporter in Sacramento. And she had become friendly with a young assemblyman in Sacramento at that time, who happened to be the chairman of the Assembly Elections and Reapportionment Committee. And that person was none other than Henry Waxman.

Lage: Oh. There's a connection for you.

04-00:21:15

Graff: So we got introduced. And I had done my law school *Law Review* note on reapportionment. It was an unusual project. It was a joint project with two other classmates, one of whom is Morty [Morton] Horwitz, who became a Harvard Law professor later, and wrote one of the really seminal books on American legal history. And the other was Frank Lloyd, who went to a Washington law firm and became one of the really early, prominent communications lawyers. He was involved in the early satellites that beamed stuff back to the—I don't know what's happened to him since; I didn't keep up with him. But I knew a lot about reapportionment.

Lage: [laughs] Yes, right.

04-00:22:08

Graff: And in fact, in England, I nominally studied reapportionment, turns out.

Lage: Yes, you didn't really tell me what you studied in England. I don't know if it's important.

04-00:22:17

Graff: Well, I can't even remember what my masters—

Lage: It was in economics, though, right?

04-00:22:21

Graff: No.

Lage: Okay. That seems interesting because—

04-00:22:24

Graff: Yes. But I learned about drawing the boundaries of parliamentary districts. I later learned a little bit about that in Japan, also. And all three countries—the

US, Britain and Japan—had similar outcomes. Namely, that rural districts had many fewer constituents than urban districts, which basically helped the more conservative political parties in all three countries.

Lage: That's interesting.

04-00:23:04

Graff: And there were reform efforts. So I knew quite a bit about all this. And by the time I was advising Henry on Baker— well, *Baker v. Carr* held that districts had to be proportional, or had to be—

Lage: Proportional to the population.

04-00:23:25

Graff: Population. And then *Reynolds v. Sims*, which came out the year after or so, refined that and basically said, we mean it; it has to be equal districts. So the question was, for someone wanting to draw as many Democratic districts as possible—

Lage: [laughs] Right. As Henry Waxman would.

04-00:23:48

Graff: As Henry would, what were the legal constraints? And as a good government person, I took that seriously and wrote a long memo for him.

Lage: You did this while you were at the law firm?

04-00:24:00

Graff: While I was at the law— Yes. Anyway, we became friends, even though he ignored everything I said. [laughs] And his wife and my then wife and I, we would have occasional dinners. He was oriented to L.A., where his district was. But what was interesting reapportionment-wise and elections-wise was that they drew districts— And I can't remember the sequence, but Reagan by then was governor and there was an impasse between the Democrats in the legislature and Reagan, or a legal ruling or something, that threw the 1974 districting into the courts. And by coincidence, I believe, the one additional district over those that were already California's was a district that turned out to be tailor-made for Henry Waxman.

Lage: [laughs] You think it's by coincidence?

04-00:25:07

Graff: Well, the master was a USF law professor. And it was overseen by three court of appeals judges. It's very much like what's being proposed now.

Lage: I didn't realize that we've had this happen before.

04-00:25:25

Graff:

But it was just once. I think it was because it was ordered by the courts, if I'm not mistaken. Anyway, that was my introduction to Henry Waxman. And I would periodically visit him later, once I was at EDF. And he got into environment and I was in environment. Although I was in water and he was primarily in air. But his sidekick Howard Berman comes into the story because he later challenged Leo McCarthy for the speakership, in about 1980 or so, when he was still in the assembly and Waxman was in Washington. Lowenstein plays into this also, because of the Fair Political Practices Commission. And eventually, because his son went to work for the Berman D'Agostino political consulting firm, which is headed by Howard Berman's brother, and which is basically one of the major political players in districting and political affairs in the Democrat party in California. Has been for a long time. Anyway, when Howard challenged McCarthy, McCarthy had been the bulwark against the authorization of the peripheral canal. And Berman picked off a couple of the Central Valley Democrats, in the course of challenging McCarthy.

Lage:

Because of his opposition to the peripheral canal.

04-00:27:08

Graff:

No. McCarthy was opposed.

Lage:

I know, but Berman picked him off because—

04-00:27:11

Graff:

Well, because of their— Berman was indifferent. But in fact, he voted on the good guys' side, initially. And I think maybe eventually— I don't know. I don't remember that. But that sort of estranged me from the Berman/Waxman gang. Berman's now chair of the House Foreign Relations Committee. Neither of them had an interest in water. But just to get to this story—and we should come back to this—fast forward to 1989. George Bush has just been elected president. George Bush says how he wants to control acid rain, and he works with EDF. EDF sort of is asked to help design the acid rain control program, one of our first major nationally recognized ventures into the world of market incentives. Our water stuff way preceded that; our utilities stuff, which isn't quite the same but involved some of the same principles and relationships.

Lage:

But this is on the national level.

04-00:28:36

Graff:

On the national level. I get a phone call early in 1989 from Henry

Waxman's staff saying, "Henry's going to be in San Francisco on such-and-such date. Would you and Sharona like to join him and a couple of his staff people?" One of whom by then had moved to San Francisco. Was no longer staff, but had been staff. And I said sure. Anyway, it turned out the purpose of this meeting was to beat the EDF up for working with President Bush.

Lage: Ah. So you got to take the heat on that.

04-00:29:14

Graff: I had to take the heat on that. And Waxman himself was mostly silent. But the two staff guys clearly had been programmed to lay into me. Anyway, as it turned out, the only substantive outcome of that meeting was that I got Fred Krupp an audience with Waxman, or Waxman got to meet Fred Krupp. And it was fairly rocky for a while, but Waxman eventually came around to the acid rain provisions of the—

Lage: For this type of arrangement.

04-00:29:51

Graff: Well, yes. And specifically, to what became the Clean Air Act of 1990, I think. Clean Air Act amendments of 1990. And I don't know how much you've been following current climate legislation, but cap and trade is the thing. And Waxman, of course, is one of the principles. So from '89 to—

Lage: That's an interesting switcheroo.

04-00:30:21

Graff: '09— Yes, it is. Yes, it is. And I've really not seen Henry much in the intervening years. You go to the capitol, you bump into them in the corridors or— But we didn't have real substantive contacts, in the meantime. There were a few, a couple, but not anything of real significance.

Lage: But that's an interesting side note.

04-00:30:48

Graff: Anyway, so you asked what did I do, during my year at Howard, Prim at that time? I did that. I represented the Swedish Broadcasting Corporation, trying to get into San Quentin to interview Angela Davis.

Lage: Was this a pro bono thing, or—?

04-00:31:07

Graff: No, I think they paid the firm. I did have a pro bono client that the firm encouraged, aside from the habeas corpus, who was an African American entrepreneur, who— He wasn't African American then. [they laugh]

Lage: Sort of like McCloskey's son, you mean?

04-00:31:29

Graff: Right.

Lage: Just by name, you mean.

04-00:31:32

Graff: Right. Yes. But he was suspected by that Department of Housing and Urban Development, it was called then, HUD, of not keeping his books all that

carefully. Their suspicions probably went beyond that. Anyway, it turned out I represented him, and we did this and that with the local HUD office. But then he was called back to Washington. And that turned out to have been right when I had first gotten the letter from EDF asking if I'd be interesting in working for EDF. So I took the occasion of representing this gentleman.

Lage: Oh, in Washington.

04-00:32:23

Graff: In Washington.

Lage: When you had your interview.

04-00:32:25

Graff: For interviews.

Lage: [laughs] Yes.

04-00:32:26

Graff: So I had a very early breakfast with the then counsel, Washington DC counsel of EDF, Bill Butler. And it's interesting, there's a contradiction between Bill's account of—

Lage: I notice.

04-00:32:39

Graff: Yes. I'm right and he's wrong. [they laugh]

Lage: Tell me what it was, because now I've—

04-00:32:45

Graff: He said that I was working in Washington at that time, which is not true. And there're also a couple of incorrect facts in those articles I brought today. Not of any great consequence. Well, yes, not of any great— Anyway—

Lage: Well, you can correct the record when we get to it.

04-00:33:06

Graff: —that night, after my full day of meetings, I flew to Islip airport on the island [Long Island], and was met by Charlie Wurster and Bob Smolker and Rod Cameron and others. I don't remember exactly who was there. Dennis Puleston, probably. We went to somebody's house.

Lage: Now, some of these were trustees.

04-00:33:31

Graff: Oh, yes. Most of them were trustees.

Lage: And Cameron was the executive director?

04-00:33:34

Graff: Was the executive director. And that was my formal interview, was an evening of dinner and hanging around.

Lage: What did you think of them?

04-00:33:47

Graff: They were odd people. They were obviously all smart, but it was just—you know, it wasn't a corporate law firm, it wasn't—

Lage: It was a big difference from your San Francisco law firm.

04-00:34:00

Graff: Right, right. Coat and tie and all that. And it was clear you weren't going to have to log your hours.

Lage: Did they want to know about your interest in environmental law?

04-00:34:15

Graff: They did.

Lage: Because it sounds like you didn't have much. [phone rings, audio file stops and re-starts] Okay. Now we're on again.

04-00:34:38

Graff: Where was I?

Lage: The meeting with the group. What impressions you got.

04-00:34:43

Graff: Oh, yes. It was, you know, down home. They did ask me—

Lage: I had asked you—you didn't seem to really have had that intense an interest in the environment.

04-00:34:54

Graff: [over Lage] No. My parents had taken me on outdoors trips. We always would wander through New England on our way to Nantucket Island. After, really, after we were grown up, my sister and I, they started going on trips to the national parks in the west, so they were outdoors people. My father mentioned some outdoors-interested stuff. My stepmother did a lot of skiing and hiking when she was young, so it was sort of in the family. When we were kids, we would go on the weekends, when there was time, to the local regional parks. And the Finger Lakes are not that far from Syracuse, so we would go there. Skaneateles was the furthest east of the Finger Lakes and we had friends who had what were called cabins in those days, and would visit there. So I had some. But I was not sophisticated.

Lage: Some outdoor recreation.

04-00:36:00

Graff: And I basically ignored the sciences in college. I did the one required course, and that was it.

Lage: Were you reading some of the things that came out, like *Silent Spring* for instance?

04-00:36:14

Graff: Not until after I got hired, really. That was part of my indoctrination.

Lage: Yes, yes. But they didn't seem to care, huh?

04-00:36:24

Graff: Well, they hired me. [Lage laughs] I had a good academic record and good—I don't even know if they asked for recommendations.

Lage: What kind of things did they ask you about?

04-00:36:37

Graff: I think they were just sort of— It was mostly, is this guy personable? That was all. I don't know that I was— It seemed like an interesting thing, but I don't know that I was passionate about, that this was going to be my life's work.

Lage: Yes, I see what you mean.

04-00:37:00

Graff: And so I had a good time with them. And it was a long day, and I was glad to get to bed, I think. [they laugh]

Lage: Right. Well, did you get a sense of how— It sounds like they were on shaky grounds there for a while, in terms of finances and were they going to be around the next year. Was that a concern?

04-00:37:23

Graff: If it was, I don't think I grilled them on it. EDF has never missed a paycheck, so whatever concern there was didn't bear out. But it was on shaky ground financially, particularly in the period just before Fred Krupp was hired. Rod Cameron, who was the executive director when I was hired, was probably the best fundraiser that EDF had as executive director, prior to Fred.

Lage: And he got Ford Foundation support, it sounds like.

04-00:38:13

Graff: Yes. Charlie and— I don't know how all that happened. They were just coming into their own. I think they respected EDF's scientific grounding. There were two or three professor—

Lage: The Ford Foundation respected that.

04-00:38:38

Graff: Ford Foundation did. One of the reasons EDF got founded was that the Audubon Society, which was trending to be a more activist organization, was uncomfortable with litigation.

Lage: I see.

04-00:38:57

Graff: And so they essentially hired EDF to do the litigation on DDT, which was EDF's first big cause. And I think they also had distinguished people who had connections at the Ford Foundation, and Rockefeller and some of the others that were relatively early funders of EDF. But if you were to look at the [Charles] Wurster or the [Art] Cooley oral histories at Stony Brook, I'm sure you'd get a lot more detail on that.

Lage: Yes. Which is not really what we have to do here, because we want how *you* saw it.

04-00:39:39

Graff: Right. Yes, and I sort of took it somewhat for granted. But one of my responsibilities, and that of every substantive staff person, program staff person, was to raise money.

Lage: Oh, it was?

04-00:39:53

Graff: But the reality was that as long as there was enough money to pay the bills, it wasn't over-emphasized.

Lage: It wasn't for growth and expansion.

04-00:40:10

Graff: Right. It was just kind of like to get by.

Lage: [laughs] Well, when did you accept the job? Or when did they offer it?

04-00:40:17

Graff: Well, I got driven to the airport the next day. And I don't recall, but it was within a week. Might even have been days. And I can't remember whether it was— I think it was a phone call.

Lage: And was it hard to decide?

04-00:40:32

Graff: Well, not really.

Lage: You must have been kind of bored at Howard Prim.

04-00:40:36

Graff: Yes, I was somewhat bored. And I knew that wasn't what I wanted to do long term. It was slightly embarrassing to be in a corporate law firm, even a liberal one, which Howard Prim was. And is, I think. Mostly Democrats, not entirely. Denny Rice ran for Congress as a Democrat. Jerry Falk was by then in the firm. He was a [William O.] Douglas clerk. And Pollak, as I said, was a Warren clerk. So it was a liberal atmosphere, but politically—

Lage: When you say it was slightly embarrassing, was that because of the atmosphere of the times, or your family, or—?

04-00:41:17

Graff: Well, particularly my cousin René, I think, who was not into corporate law, let's put it that way.

Lage: [laughs] That's interesting, that that would've—

04-00:41:31

Graff: And she was sort of my mother figure. Now, my father, on the other hand, I've since learned—I didn't really know at the time, although I might've guessed—was worried about my taking this plunge into an obscure start-up, basically. I learned this second-hand, third-hand, from my daughter recently, who said that her grandfather—my first wife's father was a lawyer—had been asked by my father whether he thought that this was an appropriate move politically.

Lage: Oh, interesting. And what did your father-in-law think?

04-00:42:18

Graff: He said, "Fine." He probably regretted his corporate-client background, and liked the civil rights work a lot more. And so he gave it the blessing. His wife was a draft counselor.

Lage: Yes, you mentioned that.

04-00:42:34

Graff: My then mother-in-law. So they were more left on the spectrum than my parents.

Lage: And public oriented, it sounds like.

04-00:42:41

Graff: Public oriented.

Lage: So you felt more comfortable heading off for this unknown start-up.

04-00:42:47

Graff: Well, I don't think I asked a lot of questions. I was always— or in the early years, particularly, it wasn't clear whether we were antiestablishment or part

of the establishment. [Lage laughs] And particularly when we started to orient to economics and market incentives and the like. We thought of ourselves as somewhat antiestablishment, but we always kind of kept our connections. And as it evolved, particularly, but even in the early years, some of the board members had establishment cred. Margaret Owings, who was the first California board member and a terrific woman, she was a rabid environmentalist; but she was also married to the Owings of Skidmore, Owings and Merrill. And similarly, Amyas Ames, who was chair of the board of Lincoln Center in New York, was on the board fairly early on. So I'm sure those kinds of connections helped with the Ford Foundation. And then eventually, we made our own connections with people in business and that issue faded. Maybe not in—

Lage: The issue of antiestablishment versus—

04-00:44:29

Graff: That's right.

Lage: Interesting.

04-00:44:31

Graff: Nowadays, everybody's an environmentalist, right? [they laugh]

Lage: Right, right. I'm thinking we should maybe save this, start next time with the new office and all, rather than try to cover a bit of the story now. How does that sound to you?

04-00:44:50

Graff: Sounds good.

Lage: Because we've got you there and hired, and let's talk about establishing the office and your early cases and—

04-00:44:59

Graff: Good. Okay.

Lage: So shall we close off for today?

04-00:45:03

Graff: Yes.

Interview 3: July 14, 2009

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05-00:00:03

Graff: There's always much more than you can talk about.

Lage: I know. Okay, well we'll start today. Today's July 14, Bastille Day, 2009. And this is the third session with Tom Graff. We just reviewed what we'd been talking about and I had thought we had you starting here in California with the EDF, but we realized you really hadn't talked too much about the Washington years, in terms of impact.

05-00:00:28

Graff: Yes. Well, the impact—

Lage: What you learned.

05-00:00:32

Graff: —personal— I think I was worried, as a young man, that I would repeat the career path of my father, who never really settled into a career. Partially, I'm sure, because of his German Jewish heritage. But EDF, when I was hired, was my fifth position in five years. I think I've got that right. First year out of law school, I was in England on a fellowship; second year, I clerked; third year, I worked for John Lindsay as a lobbyist in Washington, DC; and then fourth year, I was at Howard Prim; and then EDF was the fifth. And it concerned me, I think at the time, that I was so peripatetic and unsettled. Of course, then I went thirty-seven and a half years, and disabused myself of that problem— Or that's not quite good English, but you get the picture.

Anyway, I'll just mention a couple things about DC that we didn't talk about. One is that Carl McGowan, DC Circuit judge for whom I clerked, was a terrific man. Very capable and just a sweetheart, a really nice guy. I had a couple of really interesting cases that year. His style was different from many judges; he liked to write his own opinions. My co-clerk that year, by the way, was Bob Mnookin. I don't know if you know that name, but—

Lage: No.

05-00:02:30

Graff: —Bob has made a career, a very distinguished career at Boalt, at Stanford and at Harvard, on alternative dispute resolution. And among other things, he was hired as the mediator in a huge antitrust dispute between, I think it was IBM and Fujitsu, and I think, got wealthy off that, among other things. But he has written some really interesting articles, including one called "Bargaining in the Shadow of the Law," that kind of made him probably second only to Roger Fisher in the lawyers in the non-litigation world. And then the next year for Lindsay, I was the bottom guy on the totem pole, but I learned a lot about Capitol Hill. I didn't get a lot of independent responsibility, but on one

occasion, I had—I was trying to help Senator Javits, Republican of New York—one of the last liberal Republicans; he and Lindsay both put together an amendment to the health acts, to encourage more local clinics. That was kind of when they were getting away from the big asylums, to smaller mental health local clinics. And so I got to work somewhat with the senator, as a very young man.

Lage: This must've informed you when you came out here and were working with Sacramento.

05-00:04:26

Graff: It was a little bit helpful. Yes, it was helpful. Although I still remember Peter Tufo, my boss, T-U-F-O, telling me, "Never talk to the press." [Lage laughs] And I did not take his advice later on. But I understood that as a junior person, I wasn't supposed to be—

Lage: Yes, maybe *you* specifically don't talk— [they laugh]

05-00:04:45

Graff: Right.

Lage: And what about the approach of Bob Mnookin? Not that you did mediation, but there seems to be some correspondence with this collaborative approach you took later.

05-00:04:59

Graff: I think so. That took a while, in my case.

Lage: Yes. Maybe we don't want to jump ahead. But did it have any influence on you, the mediation trend in law?

05-00:05:10

Graff: Probably some. Another person in that world—in fact, who worked with Bob at Harvard, and she was a professor at Simmons [College]—is the wife of my best friend in college, or one of my two best friends in college, who's a psychiatrist in Boston. Her name is Deborah Kolb, K-O-L-B. And she became somewhat significant in my life and EDF's life because she was one of three consultants hired by the Hewlett Foundation as they were making the transition from sort of super-conservative funding to being willing to find the likes of EDF. That would've probably been in the early to mid-eighties, something like that.

Lage: Under Roger Heyns, maybe.

05-00:06:06

Graff: That could be, that could be.

Lage: So did that relationship, then, help them become more friendly to EDF?

05-00:06:12

Graff:

It definitely did. Although it was interesting because by then, we had already established ourselves as having substantial links with industry, and NRDC [Natural Resources Defense Council] trailed us in that regard by a few years. So it was really their litigation. They had filed litigation against Walter Hewlett's ranch in Montana. And so that did not endear them to the senior Hewletts. But despite that, the recommendations of the consultants were ultimately adopted and we started to be funded by Hewlett. Michael Fischer was involved in that, at some point.

Lage:

He was?

05-00:07:03

Graff:

Yes. And a guy named Steve Toben. I think it was Steve Toben. Anyway, so yes, the whole issue of how much you're aggressive— The original EDF motto was "Sue the bastards." And I think that's probably featured in Charlie Wurster's and Art Cooley's memoirs or oral histories at Stony Brook. So I started out—I looked it up; it was in here, I guess, in the Stony Brook archives—I filed what I think was the first West Coast EDF lawsuit, the one that the new office filed, by the end of 1971. I started in August. And it was a case against the Coastside County Water District, involving their efforts to expand their water supply. And the local environmentalists there were unhappy about development on the coast, basically. It was also the time of the Coastal Initiative.

Lage:

Oh, yes.

05-00:08:24

Graff:

So EDF—

Lage:

Before it had passed, before the initiative had passed.

05-00:08:27

Graff:

I think that was '72.

Lage:

'72.

05-00:08:28

Graff:

Yes. So that was going on. A woman named Pat Barrentine contacted me. And EDF said, "Okay, go ahead." Anyway, it was the first— The legal precedent it established in, I think it's the First District Court of Appeal, the one in San Francisco, was that the precedents—which were already two years old by the time the case was decided—on the federal level under NEPA [National Environmental Policy Act] were applicable, or at least were useful for determining the scope of CEQA [California Environmental Quality Act]. And that case was parallel to the Friends of Mammoth case, which established the principle that permitting by a local agency—in that case, the County of Mono, or Inyo, Inyo—was a significant action that required an impact report.

Lage: Under NEPA. Which was just—

05-00:09:36

Graff: Under CEQA.

Lage: Oh, under CEQA. This is California.

05-00:09:38

Graff: Under CEQA. So those cases were running parallel in the very early days of CEQA. CEQA passed, I think, a year after NEPA. NEPA passed January 1, 1970. Later on, we became much more skeptical of NEPA and CEQA cases, because all you could really get out of those was a requirement to do a better impact report or impact statement, rather than to stop the project.

Lage: To hold it up.

05-00:10:12

Graff: Hold it up. But ultimately, not stop it, absent political action or change of government or something like that. Anyway—

Lage: But that was all the rage, initially, was to file these—

05-00:10:26

Graff: Right, those cases. And then— My litigation experience at the time was minimal. I had tried one case when I was at the Howard Prim firm, in the County of Mendocino, representing the Liquid Carbonic Corporation, which produced and leased industrial gasses. And they had a distributor for County of Mendocino. They were headquartered in Oakland, actually, or at least their West Coast branch was. And he had died, leaving the company to his widow. She had sold the company to someone else. And neither the widow nor the new company was willing to pay what Liquid Carbonic at least said were their debts for use of the gasses. They would take the canisters, empty them, and then return them. And they hadn't been returning canisters. So we sued both— or I sued—both the widow and the purchaser. And the case was tried in Superior Court in Ukiah. And it turned out that the lawyer for the, I think it was for the widow, had just run for Superior Court judge against the guy who'd been elected. [Lage laughs] Talk about small town.

Lage: Right.

05-00:12:12

Graff: Anyway, many of the witnesses were kind of in and out of the— I don't know what you'd call it formally, but—

Lage: The establishment?

05-00:12:24

Graff: No, the insane asylum. [they laugh] There was a {inaudible}—

Lage: Witnesses on your side or their side?

05-00:12:30

Graff: Both sides. Well, no. Our only witness was the guy who kept the invoices and said, “We delivered these on such-and-such a date; we never got them back.” Anyway—

Lage: And the other witnesses were— [laughs]

05-00:12:47

Graff: Were all— Well, basically, from our point of view, we didn’t care who paid us, but somebody was supposed to pay us. Anyway, to my utter shock, at the end of the trial the new judge, who was a Reagan appointee, ruled that we had not established that we were owed anything. [laughs] It was kind of rural justice, getting the big city—

Lage: Yes. The San Francisco lawyers.

05-00:13:20

Graff: Right. Anyway, that was very embarrassing.

Lage: They should have hired a local lawyer, probably.

05-00:13:25

Graff: [laughs] It was very embarrassing. But we ultimately appealed and settled for some portion of what we were owed. But I’m sure that the overall cost in legal fees—which I never knew for sure, but I’m guessing the firm wrote off a good portion—wasn’t worth it, wasn’t that much money. [Lage laughs] And the reason I got the case, actually, I think, was— I mentioned, I think, last time that we represented the Swedish Broadcasting Company. And that was really an interesting case. Who has access to people in prison, under what conditions? And I think the partner who had the case, Stu Pollak, who was a former Warren clerk and now is a Superior Court judge himself in San Francisco—or maybe he’s moved up to the Court of Appeal, I don’t know. Anyway, he wanted to do that case; he didn’t want to do the Liquid Carbonic case. So I got this one.

Lage: So that was your training—

05-00:14:27

Graff: My only one.

Lage: —in being a trial lawyer, when you took on these various cases in a new field of law.

05-00:14:35

Graff: Right. And I've joked about this, but I was way underqualified for what I tried to do in those early years [at EDF]. But the great advantage, from a young lawyer's point of view, was I was going to big courts. I tried cases in Arkansas, or argued cases in Arkansas, and represented people up at the PUC, and so on; whereas most of my opponents, who were senior counsel and senior executives, were people I was deposing and questioning. So I got a lot of experience—

Lage: Yes, right away.

05-00:15:30

Graff: Right away.

Lage: That you wouldn't have gotten if you'd stayed at the law firm.

05-00:15:32

Graff: Stayed at the firm, right. I would've been carrying bags.

Lage: Before we talk about the cases, would you mind talking a little bit about how you got initiated into EDF and the people you worked with. Well, one thing that struck me last time, you didn't have— I'm used to interviewing Sierra Club people, as you see. They always have a story of their passion for the environment, and you said, "Well, that came later." But—

05-00:16:02

Graff: It did come later.

Lage: —how did you get initiated into this world of environmental activism?

05-00:16:07

Graff: Well, I would answer that two ways. Formally, I think I mentioned last time, the introduction to the scientists who were EDF's founders.

Lage: You mentioned having the one meeting, and then you said something about a week-long— Or maybe I read that you had a week-long—

05-00:16:27

Graff: Orientation.

Lage: Yes.

05-00:16:29

Graff: And I think I also mentioned that I had some background from my parents in—

Lage: Yes.

05-00:16:39

Graff: —enjoying the outdoors. But I was not a passionate environmentalist. I don't know that I am to this day. I think there's a combo. I did, because of Jerry Meral and his interest in running rivers, I soon became a part, although not an integral part, of the fairly small group that was really starting a revolution in river running in the state.

Lage: In the running of it, not with saving the wild rivers.

05-00:17:12

Graff: Right. Well, both. Both. One led to the other.

Lage: What do you mean by revolution in river running?

05-00:17:19

Graff: Well, I think prior to 1970, there was not a lot of rafting and kayaking. Obviously, there was some. But there was a huge increase in interest and participation.

Lage: So you did some of that.

05-00:17:38

Graff: I did a lot of that. Became friendly with the people who were kind of like the political leadership of that group, Jerry being one, Mark Dubois being another.

Lage: Yes, Mark Dubois, who chained himself to the rock.

05-00:17:52

Graff: Right. I actually have an interesting story about that. Should I jump ahead?

Lage: Sure.

05-00:18:00

Graff: Okay. The deputy resources secretary under Jerry Brown at the time that Mark Dubois chained himself, was Rich Hammond. I don't know if that name means anything to you. Rich was a year behind me at Exeter. Or maybe two years behind. I think two years behind. Anyway, he led the Brown administration's efforts to persuade the Corps [Army Corps of Engineers] not to drown Mark [laughs]. And Rich and I were friends, and so I was sort of privy, through the back door, to what was really going on up there. They couldn't find him.

Lage: Oh, it was unknown, where he was. I didn't realize that.

05-00:18:48

Graff: Oh, yes. No, he hid himself. And only two reporters were told where he was, and they were led to the spot, with the pledge not to disclose where he was. And he fully intended to die there, if they filled the reservoir.

Lage: So what happened? Did they—

05-00:19:10

Graff:

They stopped. The Corps stopped filling. And eventually, Mark left, had himself unlocked and left. And that was, I'm guessing, '78. Maybe earlier, maybe '76 or '7. And the case then, the formal cases worked their way up the Supreme Court. But what finally happened was, in the big flood year, which I think was '83—and there were actually two big years in a row, '82 and '83—the reservoir filled of its own account. [they chuckle] And that was the end of that.

There's actually another Mark Dubois story that is not so great. We went on a river trip with him and others. We being now Sharona, after she had moved out [to California]. And Mark had this habit of forcing people to jump into what was a very cold river. And Sharona didn't want to do it. And he basically picked her up—he was a huge man, six foot eight or so—and threw her in. She never forgave him for that. My body is my own body, basically.

Lage:

Right, right. There's a certain—

05-00:20:34

Graff:

Right. That was his high water mark. He stayed involved in environmental affairs for a long time. I don't know what it's called now; then, it was called ETC—which takes kids from disadvantaged backgrounds and minority kids on outdoor outings, including river trips. And he had a girlfriend from that group for a while. Environmental Traveling Companions, it was, ETC. Then he ended up marrying someone and moving to Seattle. So I've seen him two or three times a decade since then.

Lage:

But he was one with passion, and I guess Jerry Meral also.

05-00:21:26

Graff:

Definitely, right, right. So some of that, I fed off that. And I also became an avid backpacker, as was Sharona.

Lage:

Oh, you did? Yes.

05-00:21:36

Graff:

In fact, Bill Turner, who is a First Amendment lawyer, really, and part of my thirty-plus-year poker game, proudly tells people when the subject comes up, that he was the man who introduced me to backpacking.

Lage:

So where did he take you?

05-00:21:56

Graff:

Well, into the Sierra. The first real extended dating that Sharona and I did was a trip in the San Juans in Colorado. Another trip that he was kind of like leading was in the Marble Mountains up north in California, when it turns out Sharona was pregnant with Ben. And I think that might've been her last backpack trip because when we had little kids, we went car camping and that kind of thing. And then by the time we were ready to resume backpacking,

Sharona had had a slipped disc in her neck and couldn't carry a pack anymore. So we never backpacked after that. We would do a lot of hiking and we took the kids out to all the national parks and— Well, not all, but many of them in the West and in Canada and Alaska. But so I became sort of much more of a real environmentalist. But a lot of it was definitely the intellectual challenge.

Lage: Yes, the law and the policy seemed to be your—

05-00:23:08

Graff: The law and the policy, right.

Lage: —what grabbed you.

05-00:23:11

Graff: Right. One of the possible consequences of that was that I was never convinced that environmentalists, as a group, were more virtuous than anyone else, basically.

Lage: Just another interest group, is that what I'm hearing?

05-00:23:41

Graff: Well, no. I, I think, mostly buy into the concept that I was representing a public interest. I don't know about *the* public interest, but *a* public interest. And in terms of the legal profession, it's an interesting conundrum because, I don't know, Yesterday's news was that the Pacific Legal Foundation, which terms itself a public interest group also, just published an op-ed, I think in the back of the paper, arguing for Secretary Salazar [Secretary of the Interior Ken Salazar] to commission a God squad. Do you know what the God squad is?

Lage: No, I don't know.

05-00:24:39

Graff: There's a provision, or a set of provisions, in the Endangered Species Act that if the protection of a species is sufficiently onerous for some important—I'm not using the correct legal terms—important economic interest, it is in the discretion, I think—I don't think it can be forced—of the secretary of the interior—or maybe of the president (Michael Bean should be giving this interview, not me) to commission a group that basically is entitled, legally entitled, to kill off or to cease—

Lage: To let a species go.

05-00:25:35

Graff: Go. Which is why it's called the God squad.

Lage: Yes. Right.

05-00:25:40

Graff: And so Pacific Legal is asking for a God squad on the delta smelt.

Lage: On the delta smelt.

05-00:25:46

Graff: Which causes great consternation, not just among those who care about the delta smelt, but anyone who cares about Endangered Species Act sort of integrity. I don't think they'll be successful. But there has recently been a vote in the House of Representatives, on the floor, which was very close, to—I'm not sure exactly what it did, but it relaxed or directed the secretary to relax protections for the delta smelt. Congressman Nunes, from Visalia, was the proponent of that, and a fair number of Democrats voted for it. But my legal interests over time, moved away from species-oriented legal advocacy to more general advocacy in the water policy around— But that was a somewhat slow evolution. My first four— Well, I counted five, really, not counting the Arkansas cases that I got involved in that were other people's litigation. Coastside was the first. And I won that in the Court of Appeals, State Court of Appeals. During the course of that, a senior partner at the law firm opposing me threatened to take me to the state bar for talking to his clients. Which it turned out was totally within the code of ethics to do, so it was basically a big bluff. Well, I don't know if he thought it was a bluff or not. Anyway, he backed off.

Lage: Did you realize it was okay?

05-00:28:02

Graff: [over Lage] Well, I looked it up. Yes, I did. I did.

Lage: And why did you talk to his client?

05-00:28:08

Graff: Well, because we were trying to get them to change their minds about their course of action.

Lage: I see. So you were working on—

05-00:28:18

Graff: On the political side, also. And I think the way it worked—I have this very dim memory—was I accompanied my clients to hearings, where they were considering the project. But I was very proud of my legal work on that case. That was filed in '71.

Lage: Did you have an advisor? I'm just thinking how green you were, as far as trial law.

05-00:28:44

Graff: But I did it on my own. The other three cases that I was involved in— Michael Palmer, the other lawyer in the office, I'm sure I talked to him about what I was doing. But that one was sort of a solo act. In 1972, there were three cases that we filed, three legal cases. And in addition to that, there were a couple of hearing proceedings before the State Water Resources Control

Board. One of my lifetime friends was on the board, state board at that time, Jean Auer, A-U-E-R. The first woman—

Lage: You got an award in her name recently.

05-00:29:28

Graff: Right, right. She was a great person. And we became great friends. She was appointed first by Reagan, and then reappointed by Jerry Brown. And then she left her post and she and her husband Ty, did an around-the-world trip in the late seventies with their three boys, who were teenagers and younger—I would guess like fifteen, thirteen, and ten or something like that—and went to the most out of the way places in Russia and China, places that in those days, US tourists weren't going. It was very brave. He was a major corporate executive, so they had fairly good—well, they had means.

Lage: And is she from Marin? Are they from Marin?

05-00:30:2

Graff: From Hillsborough. In fact, she was sort of a pioneer among women, in both the environmental and political fields. She was the first woman on the Hillsborough Town Council, eventually was mayor. She was also the second woman, after Shirley Temple Black, to be president of the Commonwealth Club. Anyway, when she came back, she ended up head of the Environmental Water Caucus for many years. And she and a sidekick by the name of Roberta Borgonovo were great friends. I just had lunch with Roberta recently. And they both, Ty and Jean, within, well, roughly I think, a year of one another, died prematurely. Ty was probably seventy, Jean was in her sixties. Anyway, in one of my other cases, she was the hearing officer. It involved a flood control project on a creek in the San Fernando Valley. I think it was called Dry Creek. And it was in Calabasas, the Calabasas Gym—

Lage: [laughs] The hearing?

05-00:32:06

Graff: The hearing, the State Water Board hearing. And I don't know how much influence it had in terms of real policy, but I represented various environmentalists, including a geologist who was ostracized by her colleagues, partly for basically releasing the channel and not always building culverts to channelize urban creeks. And now since then, that's become a big deal.

Lage: Right. In Southern California, too.

05-00:32:49

Graff: Right. Yes, even on the L.A. River, they're talking about trying to make it into something a little more natural.

Lage: Well, did you take this case because people came to you, asking you to take it?

05-00:32:58

Graff: Yes, yes. A woman named Ann Mark came to us. And I don't remember the timing of that. It was fairly early on.

Lage: And how did you decide what cases to take?

05-00:33:10

Graff: Well, that's a good question I've never been able to answer. A lot of it was serendipity. Three of the cases that I was about to mention earlier, those challenging the construction of New Melones and Auburn Dams and trying to get East Bay MUD not to go to the American River—

Lage: So those were the three, New Melones, Auburn Dam, and East Bay MUD.

05-00:33:33

Graff: [over Lage] Melones, Auburn Dam, and East Bay MUD.

Lage: Those are big ones.

05-00:33:35

Graff: They were all filed in '72. And they all had their own crazy histories. Anyway, all three of those were collaborations with Jerry Meral, really. And then other people got involved in various stages.

Lage: So were those filed on behalf of somebody who came to you? Or did Jerry Meral say, here's a case where we want to affect the law and policy, kind of?

05-00:34:05

Graff: It was more our doing. We had collaborators who certainly had significant roles. The Stanislaus Campaign turned into a proposition on the 1974 ballot, Prop 17. June, was it? No, it was the November ballot, I think. Anyway, it was the one issue—

Lage: It was during the election for Jerry Brown.

05-00:34:34

Graff: Right. Jerry Brown. Yes. It's interesting. I was looking, I had my old calendars. And one of the ways I got to know Jerry Brown was inviting him on a Stanislaus River trip. And his counsel was Dan Lowenstein, my law school classmate.

Lage: Now, was this before he was elected?

05-00:35:05

Graff: Yes. Oh, yes, well before. And I was then invited by Jerry to a seminar, which I think was late in 1973, at a Catholic college in Santa Barbara—I think it's called Immaculata, but I'm not sure of that—where there was basically a two-

day seminar on state issues. And some fairly prominent people were there. Mike Boskin, do you know that name? Mike Boskin was later, I think, chair of the Council of Economic Advisors for President Bush [Sr.]. He's very close to George Shultz. Professor at Stanford, an economics professor. I think there were like four sessions—economics, environment, health, and something else. But experts were there for specific sessions.

Lage: And was this to inform Jerry Brown himself?

05-00:36:18

Graff: Brown. Right, right. No, he sat through two days of seminars, basically, so that he felt prepared to run for governor. I did something similar, actually, many years later, for [Dianne] Feinstein. Although there, it was just water. And then she was running for governor. I don't know if you remember that, but she ran for governor first and then for senate.

Lage: So you put together a seminar on water issues?

05-00:36:48

Graff: Well, she put it together. I can't remember who else was there, but it was fairly small. And yes, the water issue in late eighties was very contentious because the drought had begun and— That was the '90 election. So I to know her fairly well at that time.

Lage: But let's go back to Jerry Brown. [laughs] I'm stuck in the chronology here. Tell me about Jerry Brown on the river trip and how—

05-00:37:21

Graff: Oh, Jerry. It was so weird. Jerry is not a natural outdoorsman. I'm sort of a casual guy, generally, but he was very uptight the whole trip. And it was very surprising, in a way, to Meral and to me and others, that he ended up coming out for Proposition 17.

Lage: Because you didn't see a great love for wild rivers, it sounds like.

05-00:37:47

Graff: No. Right. But he was very intellectual and all that stuff. He had had his seminary training and I think he saw it almost in religious terms. Anyway, so those were my two quite different experiences. And then I was a little bit involved— although Jerry more so, I think—

Lage: Jerry Meral.

05-00:38:19

Graff: —Jerry Meral—in talking to him about the campaign. Because he and [Hugh] Flournoy [Brown's opponent in gubernatorial race] differed on it, so it became fairly contentious.

Lage: And then he endorsed the proposition, but it lost?

05-00:38:29

Graff: He endorsed the initiative, and it lost. But it was— I can't remember the numbers. It was not that close. But we did commission a poll later that showed that people were very confused by that a yes vote was a vote for the river and against the dam. A lot of people voted yes, thinking they were opposing the dam.

Lage: Another problem with initiatives.

05-00:39:01

Graff: Right. But even so, I think it would've lost. The other side had more money and had cleverer ads than we did and so on.

Lage: Was the Prop 17 initiative—I'll use that broadly—an EDF thing?

05-00:39:19

Graff: No. No. Well, theoretically, it would've had to have been within our lobbying constraints.

Lage: Oh, yes, you were a tax deductible organization.

05-00:39:34

Graff: 501(c)(3) organization, So it was right out of Friends of the River, which was formed, basically, initially, for the purpose of running that campaign. And Mark Dubois and Jerry and a few other people were the main proponents.

Lage: Did you like that initiative? You've expressed some—

05-00:39:54

Graff: Well, that was— What did I know?

Lage: Was it something you were—

05-00:39:57

Graff: It was interesting. It came right on the heels of the Coastal Initiative. And Jerry, as a grad student at Berkeley, had been active on the Coastal Initiative. And then he basically was a political person, although he never went into politics, strictly. But after he went into the Brown administration, which is a story I'll talk about later, he became known as sort of the environmental initiative guy, with only a couple major exceptions. And he lost many more than he won. But he always was looking for the next possibility for an initiative campaign.

Lage: Well, the Coastal Initiative was such a groundbreaking, really important—

05-00:40:42

Graff: Right, it was. Well, I'll turn to that if you want, because I had nothing to do with that at all. But you were asking about Jerry Brown. He gets elected. And I get a call within the first couple days—I can't remember who it was that

called me; I think it might've been Tom Quinn, who was his chief of staff and then ran the transition—saying, would you be willing to serve on the transition committee and do the environmental side of the transition? And I checked it out with the EDF, they said fine. I took a leave of two months, as it turned out. And there was, I think, one briefing of all the transition committee members, one of whom was Rose Bird.

Lage: Oh, she was a member of the committee?

05-00:41:52

Graff: Yes, yes.

Lage: Interesting.

05-00:41:53

Graff: And that, I later learned, was actually Brown's first pick for resources secretary. That's who he wanted to be resources secretary. And I don't remember that I personally opposed her, but I had two conversations with Brown that were relevant, in one of which I argued for someone with environmental credentials.

Lage: Because she didn't really have—

05-00:42:23

Graff: She didn't have any, no. She had a criminal justice background; I think she worked for the public defender.

Lage: I wonder why he wanted her in that position?

05-00:42:33

Graff: I don't know; he liked her. He knew her from law school or— I don't know.

Lage: So you opposed that appointment.

05-00:42:42

Graff: Well, yes. I don't know that I opposed her personally, but I took the view that he should bring someone in from the environmental community. And he ultimately appointed Claire Detrick, who had—

Lage: Did you suggest Claire Detrick, or know her?

05-00:42:57

Graff: Well, yes. I knew her a bit from the Coastal Initiative. She was from San Mateo County and was tangentially involved in the Coastside case, so I had some familiarity with her. Kent Detrick, her husband, was a big Sierra Club activist. She was tight with—

Lage: *She* was a Sierra Club activist.

05-00:43:20

Graff: Yes, right. And she was one of the— She was sort of close to the three ladies who formed Save the Bay, one of whom, if I remember this right, was a plaintiff in the East Bay MUD case. Maybe not. Jean Siri, Lucretia Edwards, and someone else. I don't know. Anyway, I got to know all the—

Lage: They're all inter-tied.

05-00:43:48

Graff: Right. Anyway, I recommended Claire, and she was appointed. She had her difficulties there; it was big jump up from what she had been doing.

Lage: And there had never been a woman—

05-00:44:03

Graff: Never been.

Lage: —in charge of all those very male-oriented agencies.

05-00:44:05

Graff: No. That's right, that's right. Anyway, she lasted two, three years. The first big test of Jerry Brown was when the loggers invaded the capitol, in January of '05, and demanded changes in the logging regs. I never knew the issue well.

Lage: They burned her in effigy.

05-00:44:34

Graff: Yes, right.

Lage: Or something.

05-00:44:37

Graff: Anyway, she appointed Rich Hammond as her deputy. And he stayed there when Huey Johnson came in as her successor.

Lage: Now, tell me more about this transition team. Did you go out and interview people—

05-00:44:52

Graff: Yes.

Lage: —for that position as resources secretary?

05-00:44:55

Graff: Yes, and I talked to Bill Grader, who was Zeke Grader's father, and who had been director of fish and game under Pat Brown. I talked to Huey. I didn't know at the time that he was friends with Brown. I later learned, through the Zen connection and all that, they were friends. But I also talked to a lot of

people about who would be appropriate. And it was clear, among the marching orders was, find women and minorities.

Lage: That's what I wondered, if that was—

05-00:45:34

Graff: Yes. So that was part of why Claire rose to the top.

Lage: And Rose Bird was appointed to agriculture [secretary of the Agriculture and Services Agency].

05-00:45:44

Graff: To ag and services.

Lage: Where she had her problems, I think.

05-00:45:46

Graff: She did. And I didn't do it, but David Roe and Zach Willey ended up in a big to-do over integrated pest management and had interactions with Rose Bird. And she was never beloved by the aggies. But I think before she was ag secretary, she was general services secretary, I think. I'm not positive of that. She was an interesting person. She was stubborn. The California courts suffered because of her rigidity, I think. I don't think it was so much the substantive rulings, although death penalty was a big deal. But she took Cruz Reynoso and Joe Grodin down with her, because she was just difficult. She was a nice lady, but she was difficult.

Lage: Tell me more about the appointments.

05-00:47:04

Graff: So I can't remember the sequence, but I had two significant interactions with Brown during that two-month period. He was a busy man, as you might imagine. One was at his home in Laurel Canyon in Southern California. And I flew to Burbank airport and was picked up by this somewhat unusual man. Have I told you this story already?

Lage: [chuckles] No, no.

05-00:47:33

Graff: Anyway, I didn't know who he was. And we talked, but it was— he just seemed kind of weird. So I was careful, pretty careful about what I said and didn't say. Anyway, I only later, much later, learned that it was Jacques Barzagli.

Lage: I thought that's who you were going to say. So he wasn't too forthcoming, either about who he was or what his role was?

05-00:48:01

Graff: No, no. I think he was sent to look me over.

Lage: But you were already on the transition team.

05-00:48:10

Graff: I was already on the team, yes. Anyway, when I got there, Howard Berman was there, I think; or maybe he came in while I was there. Anyway, I felt later that I should've read the tea leaves better than I did because Brown and Berman were going to have dinner—it was in the afternoon—and I was thinking, well, maybe I'll be invited to dinner. But no, Jacques gave me a ride back to the airport and I came home. And then the only other time—

Lage: But what did you talk about with Brown? Nothing significant?

05-00:48:46

Graff: Well, I think it was more broad, particularly with Berman present, than just the environmental stuff.

Lage: I see.

05-00:48:59

Graff: I guess it was too early for—I'm sure the Waxman-Berman-D'Agostino team was significant in the Brown campaign. But I was only dimly aware of that, if at all. And unlike Waxman, with whom I was friends, I didn't know Howard well; I knew him a little bit. And I did ask Waxman his opinion at that time, whether I should formally apply for a job with Brown, even though I was on the transition [team]. And I was too—I'll say it kind of the way I feel it now, even, many years later. I've never been good at promoting myself personally or pitching for myself. I think I'm pretty good at pitching for causes and for other people. And I admitted as much to Waxman, who was then a friend, really, as well as a significant politician. He had been elected to Congress in that same year, '74. And he said, "You've got to put yourself out there. You can't expect other people to—" I had asked him for a recommendation, basically. And I think I might've filed something; I don't remember.

Lage: But what would you have been interested in?

05-00:50:28

Graff: Well, I would've been interested in DWR [Department of Water Resources] or whatever, whatever was available. PUC [Public Utilities Commission]. Anyway, so—

Lage: But you also had the problem with your marriage.

05-00:50:44

Graff: Yes.

Lage: You've mentioned.

05-00:50:46

Graff: And so I had ambivalence from several points of view.

Lage: So you may have put yourself forth somewhat, but not—

05-00:50:54

Graff: Not aggressively.

Lage: But did you put Ron Robie forward?

05-00:51:03

Graff: I did. He was definitely in the mix. Oh, and I should've mentioned that. Brown, I don't know that I've ever told Robie this, but his name came up. Because it was not just the resource secretary, it was other positions. And at that time, the Water Board [State Water Resources Control Board] was still in Resources.

Lage: And he was head of the Water Board then, or a member of the Water Board?

05-00:51:25

Graff: He was a member, I think.

Lage: I think a member.

05-00:51:28

Graff: I think Win Adams was still the head. So Robie and Jean were both people I knew pretty well. But I brought his name up. And this is interesting for the record. Jerry Brown said, "The trouble with Robie, I called on him to persuade my father to endorse Prop 17," because Pat Brown respected Ron. And Pat Brown ended up, I don't know whether he was neutral or opposed. And then I later asked Ron about that. I don't think I told him specifically what Jerry had said. But he said he had gone to meet with Pat and Pat had said, "This is the dumbest thing on earth," or in years or something.

Lage: So there wasn't much hope of convincing him.

05-00:52:28

Graff: Right, that was Ron's view. But Jerry, I thought, had discounted Robie because of that sort of—

Lage: Discounted him for head of Water Resources?

05-00:52:46

Graff: Yes. But he was then appointed in May. The interim director was John Teerink, who had been appointed by Reagan to succeed Bill Gianelli, just for a few months at the end of his term. Gianelli was someone I got to know well. I never really knew Teerink. I encountered him here and there. But when Ron was appointed, he immediately called Jerry Meral and offered him the job of deputy. Within a day, within twenty-four hours. And so in May '75, Jerry left EDF.

Lage: That was significant, that he picked somebody who was so on the side of the wild rivers and—

05-00:53:34

Graff: Right, right. Right. And Jerry changed some over the years. But he never gave up his love for rivers, and he was basically a progressive in a pretty hide-bound bureaucracy. And Robie did some courageous things.

Lage: What did you say about the bureaucracy? He was—

05-00:53:57

Graff: A progressive. And then did what he could environmentally.

Lage: Within the—

05-00:54:04

Graff: Within the bureaucracy.

Lage: I see, I see.

05-00:54:05

Graff: Both of them, really, Ron and Jerry. And they hired some people who have emerged over time as environmental players on the water front, Jonas Minton, who's currently at the Planning and Conservation League, being one. Others who are less prominent, but more environmental. And of course, the whole world changed environmentally.

Lage: Right, yes. There's a shift.

05-00:54:31

Graff: Shifted somewhat, yes. Anyway, so we started these three cases.

Lage: Okay, now let's just finish a little bit. Were there any other significant appointments we should talk about that you might have had a role in?

05-00:54:45

Graff: With Brown? Well, I'll mention my own situation. I haven't talked about this on the record, right? My other big encounter with Jerry Brown—

Lage: No, you haven't.

05-00:54:56

Graff: —was when I drove him from Berkeley to Sacramento. I haven't mentioned this?

Lage: I think not on the tape. I think while we were initially just talking.

05-00:55:06

Graff:

Okay, okay. Right. So I picked him up at Tony Kline's house in the Berkeley Hills. I remember two things vividly from that trip, which of course, took the usual hour and a half.

Lage:

And this was after he was elected.

05-00:55:25

Graff:

This was while I was on the transition team. And theoretically, he was asking me about Claire and other potential nominees for both Resources and other positions. But I remember two things about that trip. The first was that the first thing I said to Brown when he got in the car was, "Please put on your seatbelt." And he declined. He wouldn't do it. [Lage laughs] And he said, "If they're going to get you, they're going to get you." And I was struck that he was really thinking about assassination, rather than the added safety that a seatbelt gives you.

Lage:

Interesting.

05-00:56:09

Graff:

That was my clear take. I could've been wrong about that, but that was my take. And then the other thing that was personal to me, as we kind of got on the Yolo Bypass—I don't remember if there was water in it, but it would've been late December—he turns to me and he said, "What do you think about me putting you and Lenny Ross on the CPUC [California Public Utilities Commission]?" And we mentioned earlier that my marriage was in the process of falling apart at that point. Joan was a lawyer in San Francisco and wasn't going to move. And if I had taken a job in Sacramento, it either would've meant a lot of commuting, maybe trying to get a second apartment or something, although as it turned out, Lowenstein and others lived up there. But the PUC is in San Francisco. And I had done quite a bit of PUC work by then. That was '74. I think I initiated significant— well, I intervened in a significant rate case by then, which eventually turned into a lot of other stuff. And I thought about it for a moment—just a moment—and I said, "I think you could get away with appointing one of us, but not both."

Now, Lenny Ross was a genius. A really brilliant guy, who by the age of twenty-one, I think, had both a Yale law degree, where he was editor of the *Yale Law Journal*, and a PhD in economics. He had won *The \$64,000 Question* as a thirteen-year-old or some very young age. Anyway, Lenny was head of research or policy in the Brown campaign. And he and I were friends by then. I think it was the '72 presidential election, he watched it at my house.

In that split second, or second and a half, that I took to answer the question, there were really two things that ran through my mind. One was what I think is the correct political advice, that you could appoint one young Turk, but not two. Or at least that was good politics. And the other was that Lenny was a friend of mine and I couldn't badmouth him. Actually, a third was that Lenny

was too valuable to Brown as a broad-based policy person, and that he didn't make sense as a PUC commissioner. Well, little did I know, Lenny was appointed. Lenny later added the words to one of our interventions and rate cases that became the basis upon which we could investigate the investment choices of PG&E, and which led to a visit from the PG&E documents room, where we found this remarkable kind of chart, the early form of what's now very familiar.

Lage: Like a spreadsheet.

05-01:0:02

Graff: Spreadsheet. Which said something like, to build all these nuclear and coal fired power plants would require a rate increase—I think it even had a percentage, like 10 percent rate increase—in '77, '78, '79, '80, '81, '82 and '83.

Lage: [chuckles] So they were predicting their own—

05-01:00:29

Graff: Their own huge financial requirement.

Lage: I have to stop us right here because we're—

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Lage: Okay, we're back on.

06-00:00:01

Graff: The other thing I remember—this is later—was Tony Kline calling me up. Tony was to be legal affairs secretary, and later was appointed the Court of Appeals presiding justice. Was married for many years to Susan Sward, a *San Francisco Chronicle* reporter. Tony called me up and said—and I don't know how much of this was true or not—"We're running low on funds, and Jerry wants to establish a record of being frugal," which he sort of did. "So we need to lay you off. Thanks for all your time, but goodbye." And I never heard again from anyone in the Brown administration.

Lage: No thank you or— [laughs]

06-00:00:57

Graff: Not at all. Tony sort of thanked me, but Jerry didn't.

Lage: He wasn't known for graciousness.

06-00:01:03

Graff: No, he wasn't. He wasn't. I have a couple later Jerry Brown stories that are interesting. Much later, one very late in his term. But I heard nothing. I heard Claire was appointed.

Lage: So this is before Claire was actually appointed.

06-00:01:27

Graff: Oh, yes. This was like the second of January.

Lage: Oh, that early on.

06-00:01:31

Graff: Yes. So I ended up there. He didn't take office until, what?, the fifth or something. It's not like the federal, where it's the twentieth, it's earlier than that. But this might have been late December, I don't know. But I later heard—and I'm not sure who told me this—that neither Quinn nor [Richard L.] Maullin wanted me around. They were his two main advisors when he was secretary of state. And contrary to what I expected, which is that they would go into comparable roles in the governor's office, they wanted substantive roles.

Lage: Oh, they wanted to be appointed to some—

06-00:02:11

Graff: Yes. So Quinn became the air resources board—it wasn't secretary yet, it was air resources board director or whatever. And Maullin became the first chair of the Energy Commission, which had been created in the Warren-Alquist Act passed by the legislature in '74, signed by Reagan. And the reason it had been signed was that the utilities were petrified that the Nuclear Initiative would pass.

Lage: Which was the alternative to the Warren-Alquist Act.

06-00:02:47

Graff: The alternative, right. So they decided they better put something in that was less threatening than the initiative. Now, I got quite involved in the initiative personally, on my own time.

Lage: That was that same fall?

06-00:03:02

Graff: That was that same year. Dave Pesonen, who it turns out was a friend of Brown's, but I didn't know that, he became forestry director later.

Lage: And previously head of the Bodega Bay campaign and—

06-00:03:17

Graff: Right, right. So he was the chair of the antinuclear campaign. I went to a lot of committee meetings, but didn't really do much in the campaign. The one thing I did do was that I was a speaker at a campaign rally at the Greek Theater here in Berkeley, as a warm-up speaker for Jacques Cousteau. And in all my career, it was by far, the largest crowd that I ever talked to.

Lage: And did you warm them up? Or did you *need* to warm them up?

06-00:03:53

Graff: Well, actually no. I have the years confused. Because Jerry Brown was already running for president then. So that would've been '78.

Lage: Oh, so this was later.

06-00:04:17

Graff: And they had just been up there for the Oregon primary and kind of waffled on nuclear stuff, if I'm remembering it right. So my big applause line in that theater was, we've got to get Jerry Brown to speak up more forcefully—it was said differently, but—on nuclear up in Oregon when he's running for president in the primary up there. So that would've been '76.

Lage: Yes, that would've been later.

06-00:04:59

Graff: Well, that was only two years later, that's right. Anyway, so I got know Pesonen well.

Lage: And how did you get interested in the antinuclear world?

06-00:05:10

Graff: Well, we were trying to get PG&E to stop building power plants.

Lage: Oh, that's right, growing out of your PG&E—

06-00:05:17

Graff: Right.

Lage: Any more to say finding that crucial piece of paper [in the PG&E files]? We sort of stopped you in mid-story, I think, when I changed the tape. Was there more you wanted to say about that? I know it was written up. There's the book by David Roe [*Dynamos and Virgins* (New York: Random House, 1984)], but—

06-00:05:31

Graff: I have this—it's a gut feeling, but it's not a memory, that it was— Unlike the implication in your question, it wasn't like in a stack of volumes and we happened to find it. It was more obvious than that.

Lage: I see.

06-00:05:54

Graff:

I think that's sort of brought out in David's book, too. But I don't remember the exact circumstances. He implies that Zach found it. My memory is actually that I found it; but even that's vague, and it sort of doesn't matter who found it. We both realized it was a big deal. And as David pointed out, I did keep it confidential, as was required by— Once PG&E figured out we had it in the PUC proceedings that were ongoing, they moved to keep it—what's the right word? There's a legal term for it—sequestered or secret.

Lage:

It seems like that would be something that should be open to the public, how they're going to determine their rates and how they—

06-00:06:48

Graff:

Well, it eventually became public, but PG&E's argument was that it was presidential election and a political campaign, and that's not what rate cases were for; and the administrative law judge took PG&E's argument and required that it remain secret till the end of the campaign. Which it was; it didn't come out till later. I think eventually Pesonen and others who were informed of it became part of a more general dialog about the viability of nuclear. But anyway, the other big thing that's also brought out in detail in David's book was the language in one of the PG&E decisions, that Lenny Ross put in there, that opened up PG&E's files to our inquiries about their investment choices—which had never been part of rate cases. They were always about the specific year that the rates were asked for.

Lage:

Not about what future choices they'd made to invest?

06-00:08:14

Graff:

Or were being made, that would impact rates later.

Lage:

Oh, I see. Yes. Interesting. So Lenny Ross ended up being a rather key appointment to PUC.

06-00:08:23

Graff:

Oh, absolutely. Absolutely. And he was a minority there, even after Brown appointed others. He ended up appointing Bob Batinovich to the PUC, who was a businessman, a liberal businessman, basically, and he was a good vote on most things. But it was some years before there was a Brown majority on the PUC, because they're staggered terms. I actually became friendly with one of the Reagan appointees, a guy named Fred Morrissey, who had been a professor at the business school, what became Haas at Berkeley. His big issue was undergrounding power lines, which has sort of stalled out. People have forgotten about that as a—

Lage:

Our neighborhood did it about six or seven years ago.

06-00:09:19

Graff:

Really? Yes, it's on a very slow track.

Lage: Very.

06-00:09:23

Graff: Yes. There're still lots of lines around here. I'm sure there're lots of lines in poor neighborhoods.

Lage: Oh, yes.

06-00:09:31

Graff: But he thought that that was a good expenditure of funds. Anyway, I think my reason for seeing him—he was off the commission by then—was sort of to just get a feel for what the commission was like. So when I advocated before them, I had some notion of what they were doing.

Lage: Which, again, shows your sort of political approach, it sounds like.

06-00:10:01

Graff: Right. Yes. Later, I intervened in a case on the side of James Watt.

Lage: Oh, you did?

06-00:10:13

Graff: Although I never became friendly with him.

Lage: And what was that?

06-00:10:18

Graff: Well, this is way jumping forward. Well, we had a long, contentious relationship with the Westlands Water District. And I think this is probably better to get in sequence.

Lage: Okay. Well, I'll just make a note.

06-00:10:39

Graff: Make a note.

Lage: Intervening for James Watt. Let's come back to this.

06-00:10:43

Graff: And interestingly, both Watt and Westlands opposed our intervention. And we were not allowed in the case. And there's been a lot of mischief done because we weren't in that case, I believe.

Lage: Okay, let's come back to that.

06-00:11:02

Graff: I'll come back to that. Anyway, so those are some of my Jerry Brown stories. There's another Pat Brown story, which involves the peripheral canal, so when we get to the peripheral canal I'll bring it up.

Lage: Okay.

06-00:11:22

Graff: So now we're in the Reagan— Oh, one other thing that came up, because I know you have Livermore in your archives. I did go interview Ike [Norman B. Livermore, Jr.] when I was in the transition.

Lage: Oh, you did?

06-00:11:38

Graff: He was about to close his doors as Reagan's resources secretary. And one of the issues that I was asked to investigate, by Brown and others, was whether to divide the Resources Agency into a resources agency and an environmental protection agency, which is done in some states but not in others.

Lage: To take the regulatory people out. Well, it's done in the feds, too, isn't it?

06-00:12:13

Graff: By then, yes, EPA was created as part of the same act, I think, that passed NEPA in 1970. So it wasn't till then that air and water pollution and ultimately, noise and toxic waste and so on, were separated from Interior. But it was controversial, both in terms of what was the best way to do it substantively and in terms of just who headed what.

Lage: Yes, ownership, interest in the bureaucracy.

06-00:12:53

Graff: Yes, ownership and turf and so on.

Lage: Yes, true.

06-00:12:56

Graff: But in the bowels of the bureaucracy, as well as at the top. Anyway, Ike, who had headed a combined agency, was a very strong proponent of keeping it combined. And I don't remember the— probably, one can look it up on the Internet now, but there was a small story in the *L.A. Times* that talked about what Brown's plans might be for Resources, in which Ike was quoted.

Lage: And he drew on his conversation with you.

06-00:13:45

Graff: Well, I'm sure he did, actually. But it was certainly suspected that I had helped in breaching what Brown wanted to be a quiet transition. And it wasn't a much—well, it wasn't much of a story. Oh, but how did this happen? I don't know. Anyway, I had not talked to Ike about the PUC. But the headline in the story was, "Graff Possibly Headed to PUC" or something like that. And the gist of the story was, about the utility service. So I was suspected as a leaker on that story, which I wasn't.

Lage: That was another story, aside from the Livermore.

06-00:14:42

Graff: No, it was the same story.

Lage: Oh, the same story.

06-00:14:44

Graff: Livermore was quoted in there on the— I should find that story.

Lage: It must've been about the transition in general.

06-00:14:52

Graff: Right. It was either in December or January of '74-75. By that time, Watergate was a big thing already. And of course, Brown got elected, in part, because of Watergate. Right? Because he was the political reformer. His Prop 13 on political reform in creating the Fair Political Practices Commission was a big deal.

Lage: That's true.

06-00:15:23

Graff: Anyway, I'll try and find that before we're done with this.

Lage: Have you followed Brown over the years?

06-00:15:30

Graff: Jerry Brown?

Lage: Yes.

06-00:15:31

Graff: Somewhat.

Lage: And what do you think about his reentering the governor's race?

06-00:15:38

Graff: Well, I'm also friendly with Gavin Newsom. And I, at one time, was somewhat friendly with Antonio Villaraigosa. We went on a fact-finding mission to South America together. I will refrain from calling it a boondoggle. [Lage chuckles] Actually, Barbara Lee was on that trip. But I haven't decided what I'm going to do, in terms of who to vote for or who to support. I see arguments for both of them. I actually think— Well, I don't know. It's better for me not to get into this.

Lage: [laughs] Okay, I'll let you off the hook. You sound regretful when you talk about the fact that you didn't put yourself forward [for a Brown appointment].

06-00:16:33

Graff: Well, in a way.

Lage: Do you feel that way—you would've taken a different turn.

06-00:16:37

Graff: A very different. And I think you wouldn't be interviewing me today if I'd become a PUC commissioner. I would've been one of five, and I would not have had the sort of intuition that Lenny had, to put those two pages addendum to a 180-page—I'm guessing—opinion. But who knows? It was the road not taken.

Lage: Yes. Or you might've put yourself forth for some other appointment.

06-00:17:16

Graff: Well, the only other time I significantly thought about another path in life was thinking about putting in for a federal judgeship, which was feasible, if at all, only in the first two years of [President William J.] Clinton's term in '93-94. And that had lots of complications. We can talk about them later, if you want. But basically, it's been a one-track career. And I don't regret it at all.

Lage: You might've had much more impact doing what you did.

06-00:18:00

Graff: Probably, probably. And we talked a little about this earlier, but even in '74-75, I had experienced the impact of a young person's role in an organization that had no old people.

Lage: Yes, yes.

06-00:18:24

Graff: But where the forces on the other side were veterans of the public policy and semi-public policy worlds that I inhabited. And particularly, I would say, for the first twenty years or so, up to the passage of the Miller-Bradley bill in '92, I felt like I had a major impact on public policy. On water particularly, but then through colleagues, on other things. Or *with* colleagues, on other things. Energy and electricity. So no, I don't really have regrets. In talking with family, particularly recently, about these interviews that we're conducting now, I have second thoughts about how significant my impact really was. For example, on water marketing. I don't know if you've seen the video that the EDF board put together for me.

Lage: Mm-mm.

06-00:19:43

Graff: It's on YouTube; you can just go view it [<http://vimeo.com/7584627>]. A lot of it's about my impact on water marketing. You can make the case that there's been very little long-term water marketing in California, to my regret and to the disadvantage of the state.

Lage: The mechanism is there, but it hasn't been used the way you—?

06-00:20:10

Graff: Right. And there's still significant resistance in source areas There's resistance among potential purchasers. Water is an unusual "commodity". Your audio doesn't show my quotes.

Lage: [laughs] No. Oh, yes, your quotes around "commodity"— This is why we like to video.

06-00:20:37

Graff: Well, the word commodity was used in one of our op-eds. The titles of op-eds, or ops-ed, [Lage laughs] are picked by the papers, not by the authors. And one of them was, "Water is a Commodity," et cetera. That's one that was jointly authored by Zach and me. In fact, at some point, we should probably go over op-eds that are— They're upstairs, I think, most of them. That one might be here. [papers rustling, finds op-ed.]

Lage: Okay, "Water Is A Commodity, So Let's Treat It As One." *L.A. Times*, 1984.

06-00:21:50

Graff: Right. That was post-peripheral canal.

Lage: You didn't pick the [word] commodity.

06-00:21:57

Graff: We didn't pick the title. Water *is* a commodity for some purposes, and not for others. And one of the controversial— If you want a copy, I can get you one.

Lage: Okay.

06-00:22:13

Graff: One of the critiques of our water work and our water marketing and economics work has come from the left, who say water's a public trust, not a commodity. And even today one of the major alternatives, water supply alternatives, for those who want to build a peripheral canal would be buying it from people who have water rights that are ancient, historically, but that are used for much less economic purposes than urban uses. But there's a big contingent on the left, which I think has become more prominent and has a little more political leverage, as the result of the recent turmoil in markets and the discrediting of free markets, that doesn't like water marketing. And I get a fair amount of flak, even in my dotage here, from the left on this.

Lage: It's interesting that it's tied to the rise and fall of this trust in markets, in a way. The rise of water marketing came a time when the free market economics was also prevalent.

06-00:24:03

Graff: Well, it's interesting. I studied up some, mainly on the energy side, on regulation. And the guru of regulation, of deregulation, which is sort of tied to marketing, was Alfred Kahn, who was a law professor at Cornell who wrote a

two-volume work on regulation. And when I started to do the energy regulation, which really preceded the work that I and Zach did on water marketing, he was the guy to read. He ended up promoting deregulation for Carter, a Democrat, in the late seventies. And particularly, he started with doing in the Civil Aeronautics Board, which used to regulate both routes and prices of airline tran—

Lage: So the air transport essentially.

06-00:25:08

Graff: Right. And there were, it—and I'm not sure this is true—but there were at least two regulatory agencies that disappeared in the Carter years. One was this Civil Aeronautics Board. The FAA continued with regulatory—

Lage: For safety.

06-00:25:27

Graff: —safety things. And the other was the Interstate Commerce Commission, which regulated—

Lage: Trucking?

06-00:25:37

Graff: —freight and trucking.

Lage: And very complicated.

06-00:25:41

Graff: The CPUC still does regulate rail and trucking to some extent in California; that has not disappeared. They're under the CPUC.

Lage: So this interest in—

06-00:25:57

Graff: And there's still water regulation at the CPUC for private water purveyors. Anyway—

Lage: So you read up on Alfred Kahn.

06-00:26:08

Graff: So I did. And so I was just sort of contesting a little bit your notion that this is a Republican idea. It ought to be more of a Republican idea than it is. I've become very friendly with Terry Anderson, who's— [coughs] Excuse me.

Lage: Okay, I'll put this on pause. [audio file stops and re-starts] Let me just say here, we're back on the tape after a little break, and sort of decided to hold off on this evaluation of water marketing and how it came about until we get into more of that time and the different issues that you were involved in. So we're going to go back to the early litigation.

06-00:27:01

Graff: Well, this is actually a good time to mention that our first office was on Durant in Berkeley, kind of the same longitude as Boalt [Law School], one block over on the block between College and whatever that is there. It's no longer Piedmont [Avenue], it's—

Lage: I think it is Piedmont.

06-00:27:32

Graff: It stays Piedmont?

Lage: Yes.

06-00:27:33

Graff: I think once you hit campus, it changes names. Anyway, and my two colleagues— We've talked quite a bit already about Jerry Meral. The other one was a lawyer named Michael Palmer, who had some legal experience already, including, as it turned out, PUC experience at a law firm in Cleveland. And maybe this is slightly unfair to him, but I think he saw joining EDF as a ticket to come to the West Coast. And he only lasted less than two years. He and I became somewhat friendly. He was a very formal sort of guy. Tall, aristocratic bearing. We played a lot of tennis together. But he left to go back into private practice pretty quickly.

Lage: So the three of you were hired independently—

06-00:28:34

Graff: Independently. Right.

Lage: —and then sent out 5,000 miles from the home office to—

06-00:28:39

Graff: Yes, 3,000, but yes. And we hired someone who was out of a job because she was a Latin teacher and that was no longer being taught as much, named Portia Lee. Anyway, Michael, who had the litigation experience, took on the New Melones case—

Lage: Oh, he did?

06-00:29:04

Graff: —on his own. And I took on the Auburn case. And my co-counsel in the Auburn case was John, Leshy, L-E-S-H-Y, who went to NRDC eventually, and then became a law professor at Arizona State, and then became Bruce Babbitt's solicitor. Among other things, John's a good basketball player, and we used to— Our basketball team played in the San Francisco lawyers league and won the title one year. And it's funny because it was brought up in a totally different context, just two weeks ago, when I played poker with Bob Vizas, who remembered our team, which was a very good team.

Lage: And who else was on your team besides—

06-00:29:54

Graff: Well, Bill Brockett was on our team, who was John Keker's partner. Do you know the name John Keker?

Lage: The name's familiar, but I can't say that I know—

06-00:30:02

Graff: He's represented a lot of fairly notorious clients, including a couple of the Enron executives and I can't remember who else. His son was a classmate of Samantha's, my daughter, in high school. He's had many prominent clients. Bill was a former public defender in San Francisco, very tall guy. Six-five. John's probably six-three. Peter Tague was on that team. He's now a Georgetown law professor, runs Georgetown's legal program in London. And I was the little guy, I was the point guard.

Lage: [laughs] So these experiences are contact building, also.

06-00:30:50

Graff: Right.

Lage: Like your *Law Review*.

06-00:30:55

Graff: Anyway, the reason it came up was because I brought up the name of another guy, who was the only guy on the team who could really make his own shot. That's the ling.

Lage: Create the shot?

06-00:31:09

Graff: Create his own shot. Guy named {Eric Henricks?} I knew was very tragically murdered. He became a lawyer in a small office in Oakland and one evening, was just accosted and killed on his way to his car. Fairly early on. I don't know how it came up. I guess we were talking about aging and lawyers who had died. Another guy who played in our poker game for many years, who also died, in a helicopter crash, was Joe Remcho, who was also a prominent lawyer. He was a lawyer for the Democratic party and an expert on elections law. His wife, Ronnie Caplane, ran for assembly in the local district here. I'm not sure if it's the Berkeley district or it's the North Oakland. They overlap and they're different from time to time. And sometimes they're together and sometimes they're separate.

Anyway, that was Michael Palmer. He played tennis and left in two years. [laughs] But actually, he *tried* the New Melones case. And I was second chair. The judge was Charlie Renfrew. You know that name?

Lage: Yes, I do, but—

06-00:32:37

Graff:

Charlie ended up deputy attorney general under Carter. But he moved up to the Ninth Circuit eventually. His sister taught Samantha in grade school. Anyway, he was very impressed by the colonel, Colonel [James] Donovan, who testified for the Corps. One interesting distinction between New Melones and Auburn is that New Melones was a Corps project, and Auburn was a Bureau [of Reclamation] project. And Marc, if you read Marc Reisner's book, *Cadillac Desert*, he goes into the sort of different cultures and the big competition between those two agencies in the Western states.

Anyway, we argued in court that the New Melones EIS [environmental impact statement] was inadequate, which it clearly was. But Renfrew, I can't remember exactly how he phrased it, but he kind of surprised us. We should've known better. We were unprepared when he said, "Okay, that's the end of the case on the merits of the EIS. But now what should the remedy be?" And he ended up basically finding the EIS inadequate, but would not enjoin the project. So we took that up to the Ninth Circuit, and I believe lost in the Ninth Circuit on the question of remedy. So essentially, it was a hollow victory.

Lage:

But wouldn't the remedy be to redo the EIS? Or they couldn't re-do it because there was too much—

06-00:34:38

Graff:

Oh, no, that was fine. But he wouldn't enjoin the project.

Lage:

I see.

06-00:34:44

Graff:

So that the big action on New Melones ultimately was in the Water Board, where we challenged the water rights because the bureau had applied for water rights, but hadn't decided who was going to get them.

Lage:

They build it before they—

06-00:35:01

Graff:

Right.

Lage:

—need the water.

06-00:35:03

Graff:

And the Water Board eventually, in a kind of Solomonic decision—this was with Robie and Auer— said they couldn't fill the reservoir until they determined what the water rights were going to be used for.

Lage:

Which postponed it.

06-00:35:27

Graff:

Postponed.

Lage: Until the heavy rain. [chuckles]

06-00:35:31

Graff: Right. Auburn was a different case. They'd also gone to the Water Board, decision 1400.

Lage: That one hadn't been built yet, right?

06-00:35:44

Graff: No, that's correct.

Lage: And New Melones had already been built.

06-00:35:46

Graff: Well, it was partially built. The project was actually called the Auburn-Folsom South project. And the bureau had built, or was in the process of building, the Folsom South Canal. And we tried that case in front of Judge McBride in Sacramento. That case was tried by four people on our side, two lawyers and two scientists. The lawyers were John Leshy and myself; the scientists were Jerry Meral and Phil Williams. I don't know if you know that name, Phil Williams. Phil— Well, let me do the other first because they're more familiar to people. John, I just explained went to NRDC and then became prominent in the Clinton administration. A great guy. They were all great guys, actually. We tried that case in the middle of the energy crisis of 1973, driving back and forth to Sacramento while everyone else couldn't get gas. But you could get gas on the freeway. So we would always get gas—

Lage: Going and coming.

06-00:37:07

Graff: Going and coming to Sacramento. John and Jerry did the water supply aspects of the case. Phil and I did the flood control aspects, flood prevention aspects of the case. And you know, it's one of my few Perry Mason moments. [Lage laughs] Phil found all these old reports in the archives—I think at Berkeley, actually—one of which was written at the time of the Folsom South Dam's authorization in the forties. And it said something like, Folsom Dam will forevermore protect Sacramento from floods.

Lage: We don't need more.

06-00:37:58

Graff: We don't need more, right. And so I timed my cross-examination of one of the bureau's lead witnesses—or maybe it was the Corps, because it was a flood control matter—for right after a break. And then I pulled out this document and I had him read it to the court saying, we don't need any more flood control. And it was a hugely embarrassing moment for the witness. And then I had another—

Lage: And did you enjoy those moments?

06-00:38:39

Graff: Oh, absolutely.

Lage: [laughs] See, if we had a video camera, you could see how delighted your face is.

06-00:38:47

Graff: Anyway, McBride was a more sympathetic judge than Renfrew. And he ended up with an injunction. He allowed the Folsom South Canal to be completed, but he restricted the uses for which the water that would flow down the Folsom South Canal could be used. And then he said, as to Auburn Dam, the EIS had to be redone. Shortly thereafter, the Oroville quake happened. And it's a long story and complicated, but Auburn Dam basically never got untracked after that.

Lage: Because of too much earthquake uncertainty?

06-00:39:37

Graff: Well, that required a redo and a much more expensive version of the dam. And to get it reauthorized required congressional action. So there were two times, once in '92 and once I think later, when John Doolittle tried to get the dam authorized, but failed on the floor of the House. And I still recall being in the gallery when the vote on Auburn Dam took place. So it was in '92, I think.

Lage: So it went on forever.

06-00:40:17

Graff: It went on, oh yes.

Lage: And is Doolittle the San Diegan? Or where is he from?

06-00:40:23

Graff: No, Doolittle is from the Auburn area.

Lage: From that area of Folsom.

06-00:40:28

Graff: Yes. And what I remember, it was Newt Gingrich walking onto the floor of the House with this satisfied look. And I was trying to read what he was thinking. On the merits. Unlike Doolittle, who was purely a political animal, basically, Gingrich, I think, is a serious student of policy, as well. Not that he isn't also political. And of course, what happened is there was a split vote, Democrats and Republicans on both sides, with the fiscal conservatives on the Republican side joining the environmental Democrats, also some fiscal Democrats, against Doolittle's "build it at all costs." And he lost both times on the House floor.

Anyway, we filed both litigation and Water Board proceedings, or joint Water Board proceedings in both cases. And the Water Board proceedings ultimately

were combined, three of them. One involving the delta, that we had a minor role in but were nominally part of, but that really got going before EDF got heavily involved in Water Board activities. And then the American River and the Stanislaus River. And they were all combined in what became a famous Supreme Court case called *California against the United States*, where the US Supreme Court basically upheld a quite wide berth, or quite wide domain for states' water rights relative to federal control, even for federal projects. Because in all three cases, there were federal projects, the CVP, involved. Meanwhile, the East Bay MUD case—

Lage: And did EDF take that to the Supreme Court, or others?

06-00:43:04

Graff: No, the principal parties were the federal and state governments.

Lage: I see.

06-00:43:10

Graff: But we filed an amicus brief on behalf of the state in the late seventies. Interestingly, the California Supreme Court in a case—well, in the East Bay MUD case, which I had filed in state court; and in a way—I don't know how much more time we have—that has some interesting legal twists to it—ruled that federal law was supreme. And this was Judge Clark.

Lage: William Clark?

06-00:43:53

Graff: William Clark, Reagan's appointee. And therefore, we could not sustain our claim in state court for waste of water or unreasonable diversion of water on the American.

Lage: That's the East Bay MUD case.

06-00:44:15

Graff: The East Bay MUD case. I filed a petition for certiorari. I don't know if you know what that is.

Lage: Well, tell me.

06-00:44:23

Graff: It's basically a petition for review. It's a fancy name for petition for review. And cited the US v. California case saying—

Lage: [laughs] Oh, this was *after* the—

06-00:44:35

Graff: Afterwards, in nineteen-seventy— I think it was late '78. And without hearing the case, the US Supreme Court vacated the California Supreme Court case and sent it back for further proceedings, based on California law.

Lage: Because it didn't follow precedent.

06-00:44:54

Graff: Right. And then in the second round— So I argued that twice before the California Supreme Court. The second time before the California Supreme Court, they reversed themselves and sent it back to Superior Court for further proceedings. By the time this second California Supreme Court case came out, it was probably the early eighties. And then it had a very complicated set of hearings thereafter, in Superior Court, at the Water Board, and then again in Superior Court, which ended with this ambiguous decision by Judge Hodge of the Alameda County Superior Court, in which he said the public trust and California constitution prohibition on waste and unreasonable diversion of water was such that East Bay MUD could take water from the river only in wet periods. Now, the whole rationale of the East Bay MUD desire to divert water from the American River was to take it in dry periods.

Lage: That's when you need it.

06-00:46:19

Graff: Right.

Lage: But that would be an argument for building a dam or something. Divert it and build a reservoir.

06-00:46:26

Graff: —reservoir. Anyway, they finally, after that decision, decided to go build an alternative canal from the Sacramento River, starting at Freeport, the diversion point at Freeport.

Lage: Is that lower down?

06-00:46:46

Graff: Lower down. It's below the confluence of the American and the Sacramento. And basically, they cut a deal with the County of Sacramento, which got benefits from that, as well. And that's under construction—

Lage: Now, is that the resolution of that case, or is it still ongoing?

06-00:47:00

Graff: I think it's the resolution.

Lage: That's a very long-lasting court case.

06-00:47:05

Graff: Yes, right. There's a fun picture of me and Randy Kanouse and John Garamendi at the groundbreaking for the Freeport project. I spoke at that. That was my last real speech. My voice was already flagging by that point. It was May of 2007. And shortly thereafter, I was diagnosed as having a tumor on the vocal chord. And of course, during all that time, we had many other

interactions with the bureau and the Department of Water Resources and East Bay MUD and all the rest of the water agencies.

Lage: And all these agencies, yes.

06-00:47:56

Graff: Which I guess we'll start tackling at the next go-round.

Lage: Right.

06-00:48:02

Graff: But I became friendly with several of my adversaries in East Bay MUD. For that matter, with others at the bureau and at the department, other water agencies. We can talk about that some.

Lage: Okay. Shall we save that for next time, too?

06-00:48:21

Graff: Let's do that.

Lage: I think we've about run our course today.

06-00:48:25

Graff: Yes, my voice starts to go about the hour, forty-five minute mark.

Lage: Yes. And that's a good length for an interview. So I'm going to turn this off.

06-00:48:33

Graff: Okay.

Interview 4: July 16, 2009

Begin Audiofile 7 06-16-2009.mp3

Lage: Okay, here we are on session four with Tom Graff. And today is July 16, 2009.

07-00:00:16

Graff: Very good.

Lage: Okay, Tom. We had sort of a sense of where we were going today, and part of it was about the California office, the people, and how you all worked together with national EDF. And we're going to talk about electricity issues and other early issues.

07-00:00:34

Graff: Good.

Lage: So start with what you think is the logical beginning there.

07-00:00:39

Graff: Well, we haven't really talked about the EDF leadership nationally. Rod Cameron was the executive director when I was hired. And other than Fred Krupp, who's now president and was the executive director for some years, beginning in 1984, Rod was the best fundraiser we've had, as a leader in the organization. And I still remember one case of particular interest. There was a man by the name of Julian Price, who among other things was, I think, the largest single donor, or one of the largest donors to the McGovern for president campaign, in 1972, I guess that would've been. Julian got interested in sort of alternative lifestyles and back to the land, back to nature kinds of as a way to conduct his life. And Rod talked to him about the very young EDF at that time, and Price stepped up and said, "I'll give you \$100,000," which for the early seventies, was a lot of money. It's still a lot of money, but—

Lage: It was more then.

07-00:02:08

Graff: It was more then, a lot more. And to Rod's everlasting credit, he turned around and thanked Price for the money and said, "It'd really make a difference if you gave us another \$100,000."

Lage: He was a good money raiser. [laughs]

07-00:02:25

Graff: And Price went along. And then I somehow associate that—although I'm not sure correctly—with *The Electric Horseman* benefit that happened out at the old Coronet Theater on Geary Boulevard in San Francisco.

Lage: And that was a film?

07-00:02:41

Graff: A film. It was a Robert Redford film. He was the star and he was already emerging as a leading environmental spokesman and contributor.

Lage: And was the movie anything to do with the environment, or just—

07-00:02:53

Graff: Not really, no. No, it was—

Lage: It was a fundraiser?

07-00:02:55

Graff: —a commercial movie, yes, but it was— I think there were two premieres, one in New York and one in California, in San Francisco. So that was Rod. Rod was in the East Setauket office, which is where EDF opened its doors. I don't really know all the circumstances. I'm sure if people want to know a lot more, they can go to the Stony Brook files. But he basically absconded one day. Maybe absconded isn't quite the right word. But he and his wife had two kids. He packed the two kids and took off for the state of Washington, where he now resides.

Lage: You mean he just left precipitously.

07-00:03:47

Graff: Precipitously.

Lage: Absconded makes it sound like he left with funds.

07-00:03:50

Graff: No, not absconded.

Lage: You didn't mean that.

07-00:03:51

Graff: No, no. He didn't take any money, as far as I know. But he and his wife were having difficulties. Basically, he absconded with the kids.

Lage: Oh, I see what you mean. Yes.

07-00:04:03

Graff: Yes. Anyway, so we had to look to look for a new director. I'm guessing this was about 1975 or so. And we found an interesting fellow by the name of Arlie Schardt, S-C-H-A-R-D-T. Arlie had a background in public relations and media, and was a terrifically enthusiastic human being. I think his fundraising skills were nowhere near Rod's. And that was pretty much true, as well of the woman who succeeded him, Janet Brown.

Lage: And were you relying on them for the fundraising?

07-00:04:54

Graff:

Well, that's a good question. We had a lot more autonomy, particularly to seek out West Coast funders, who were just emerging. I can't remember when the Hewlett Foundation and the Packard Foundation were formed. And there were already others. The Compton Foundation, although it had been headquartered in New York, the successor to the founder, Jim Compton—I don't know if you know that name—was on the peninsula. And he was a great river runner, so he took to EDF quickly. So we raised a good chunk of our discretionary money here.

Lage:

Would you raise it for specific agendas that you—

07-00:05:50

Graff:

Projects, agendas, yes. Like in the case of Compton, it would generally be for river-related or water-related work.

Lage:

Like to fund work on litigation?

07-00:06:02

Graff:

Originally, it was litigation. We talked some about those early suits. I have some more I can say about those.

Lage:

I think that's an important thing to note, how the funding developed, because that's sort of behind the scenes in the eruption of the environmental organizations.

07-00:06:21

Graff:

Right. And in the early days, the funders were basically as enthusiastic about the programs as the program staff themselves were. It evolved so that increasingly, particularly— Let me not jump ahead, but remind me to bring this up.

Lage:

Okay.

07-00:06:50

Graff:

Arlie only lasted, I'm guessing, four, five years. And I think in those years, the late seventies, early eighties, in terms of what, probably, outsiders don't always see as competition but I think most insiders *do* see as competition, NRDC pulled ahead of us in terms of funding, and also potentially, program.

Lage:

Are you talking about West Coast, or overall?

07-00:07:32

Graff:

Overall. The board of directors, board of trustees, makes the decisions about who's executive director or president. But Arlie left. And I'm not sure of the details of that. One conflict I know about that Arlie was involved in— Well, later, when we're talking about electricity, I'll mention David Mastbaum. David Mastbaum had been Legal Services lawyer in the seventies. I mean in the late sixties, early seventies. And then he'd gone into environment. But he

still sort of was basically a hippie. He's described in David Roe's book, if people want a more fulsome description. Anyway, for reasons that I don't recall, it turned out that David was paid less, for comparable work, than others in the organization. And David was not that interested in money. But he felt his status was being compromised or disrespected, and so that caused some friction in the organization. Later on, David had his differences with Janet Brown, also. In fact, I'll tell that story now. Right at the end of the Carter administration, Carter did sort of an about-face on energy policy, and started to promote big energy projects and instructed—

Lage: When he'd started out by cutting back dams?

07-00:09:26

Graff: Right, right.

Lage: Oh, because of the energy crisis.

07-00:09:29

Graff: Crisis, '79. And Iran was going on and all that. So Cecil Andrus started to change his views, or change the administration's positions on some of the big projects, one of which was the Allen-Warner Valley energy system, which had significant environmental and aesthetic impacts on Bryce Canyon National Park and on the wilderness of southern Utah. David was sort of our principal on Allen-Warner Valley. It overlapped with the utility reform issues in California, because—

Lage: It's in the Roe book.

07-00:10:15

Graff: Right. Right. And basically, most of the electricity generated there would come to California. So it was both the financial side and the environmental side. Anyway, David was leaked a memo written, I think, by a staffer at Utah International. There were two major elements of Allen-Warner Valley. There was the coal mining element and the electricity generation element. Utah International was a coal company. Anyway, what the memo said was that Joe Browder, who was special assistant to, I think Guy Martin, who was assistant secretary for land [and water resources.]

Lage: In Interior.

07-00:11:12

Graff: Yes. And Joe Browder had been a very prominent environmentalist before going into the administration. Had been quite close to Jimmy Carter in the '76 campaign. Anyway, this memo essentially said Joe Browder has assured the company that they would get their permits approved.

Lage: Ooh.

07-00:11:33

Graff: And who knows how, but the contents of the memo appeared in a front-page story in the *Los Angeles Times*.

Lage: And you *don't* know how. [he laughs] Or *do* you know how? [laughs]

07-00:11:47

Graff: Well, I know who the reporter was, a fellow named Tom Redburn, who's now a big-time editor at the *New York Times*; in the meantime, was, I think, editor or business editor of the *International Herald Tribune* in Paris. I became quite good friends with him for a while. And I don't actually remember whether it was David or I who gave the memo to Redburn. But he thought it was newsworthy. Anyway, Andrus took it upon himself to call Janet Brown and to complain, saying they had been falsely represented. I don't remember what his argument was. It was the very end of the Carter years. Janet eventually stood up for us, but she was somewhat intimidated, I think, by having the secretary of the interior call her.

Lage: Yes. So did she call you on the carpet at first?

07-00:12:54

Graff: Well, she demanded an explanation. And Joe, and his wife Louise Dunlap, who was the original head of the League of Conservation Voters in Washington, were well respected environmentalists. So it was kind of a hairy period. And as far as I know, it's the only time that we were sort of confronted by an executive director of an action we took out here.

Lage: You pretty much were left—

07-00:13:37

Graff: To ourselves.

Lage: —to yourselves, but—

07-00:13:38

Graff: In those years. Particularly in those early years, by Rod and by Arlie, and even by Janet. And I was starting to become more vocal in the late seventies, early eighties, on the economic approaches and market approaches, both in electricity and in water. And I think I gave you— There was a big story that David wrote. Got planted by John Emshwiller in the *Wall Street Journal*, September 28, 1981, that's entitled— Well, the first title is "Power Struggles," and then it's "Environmental Group, in Change of Strategy, Is Stressing Economics." So that was as early as 1981.

Lage: But do you see that thrust coming out of California?

07-00:14:30

Graff: Oh, absolutely. In the early years, a lot of it was in California. Although that's a good segue to mentioning a couple of the key other staff people who were hired about the time I was, in other offices.

Lage: Oh, okay.

07-00:14:50

Graff: One was a man by the name of Ernst, E-R-N-S-T, Habicht, H-A-B-I-C-H-T. And Hasty was his nickname. He started energy work comparable to the original energy work I was doing in California. This was even before Zach Willey was hired. And he was responsible, among other things, for attracting Bill Vickrey to EDF's cause. And Bill, who was later a Nobel laureate, testified as witness for me in an early PG&E proceeding, on congestion pricing.

Lage: And he was an economist?

07-00:15:41

Graff: Professor at Columbia University. The other early staffer—and these are mentioned in *Acorn Days*—was Leo Eisel. Leo was a water expert, unlike Hasty, whose expertise was electricity and energy, and to a degree, transportation. Leo actually had a doctorate in—I'm not sure. Harvard generally does not have engineering PhDs. But Leo, and later, one of the principals in the Denver and Boulder offices, Dan Luecke, both got their graduate degrees from Harvard. And I think it might've been called environmental engineering, eventually. Something like that. Anyway, Leo's early passion was flood control and flood prevention. There's a film that EDF produced early on, called *Planning for Floods*, that Leo was a big player in. We tied into that through Phil Williams, who also was a PhD, who was working for Bechtel for a time, then got fed up with it and decided he was going to cast his lot to—

Lage: The other side. [laughs]

07-00:17:18

Graff: —chance, to the other side. And he started working for us on the flood control management benefits, or lack thereof, of building a second dam on the American River, Auburn. Anyway, they were major players in the early days. And Phil was working with me big time. Already in '72, he produced a big volume on flood control in the American River, which I have somewhere; I'll dig it out.

Lage: Was he located here?

07-00:17:57

Graff: He was located here. And he eventually started his own consulting firm. But on top of that, invested in real estate in San Francisco and became quite—I don't know about wealthy, but certainly comfortable. And his firm is Phil

Williams and Associates. Still does a lot of work. Does a lot of work now for the Corps.

Lage: [laughs] Oh, really? Isn't that—

07-00:18:19

Graff: Yes. But he also did a lot of the technical work for Audubon and the Mono Lake Committee and others on Mono and Owens.

Lage: So there was a tremendous amount of expertise that you drew on. That was sort of a hallmark of EDF, was it not?

07-00:18:37

Graff: Well, yes. Right, right. And compared to the Sierra Club—I know you've done some Sierra Club interviews—Sierra Club's great strength and pride is its grassroots operations. And I was an early—once I joined EDF, I almost immediately became a member of the Sierra Club and the water committee for the Northern California Conservation Committee. And Jerry Meral led the way on that. He was already a Sierra Club activist.

Lage: So you were on that Northern California Regional Council.

07-00:19:16

Graff: I was a member, I was not a big shot. But later on, we'll get to this; I think next time.

Lage: Yes, when we talk about the peripheral canal.

07-00:19:24

Graff: When we talk peripheral canal. Jerry was a prominent member and I was kind of just going to meetings. And then when Jerry left to go to Sacramento, I kind of took his place; not only here with EDF, but with the club. And so when the [Sierra Club's] national referendum [on the peripheral canal] was qualified—I might've already given you some of the material on that.

Lage: You wrote the article; you gave me the copy of that.

07-00:20:00

Graff: Okay. Good. Anyway, I was selected by the club, basically, to write the anti-canal position. And one of the tensions that's run through EDF's relationship to the broader environmental community has already been that we're viewed with some suspicion by the grassroots organizations, particularly—Well, and eventually, by the very litigation-oriented organizations like the Coalition for Biological Diversity, in more recent years. I might bring up in that context, Michael Bean, who became one of the really prominent lawyers in the last three decades on wildlife law. Wrote the book, really, on federal wildlife law. But he's undergone a lot of suspicion by the coalition because he's always been looking for ways to reach out, particularly to private landowners who have wildlife on their properties.

Lage: And work with—

07-00:21:15

Graff: And get them to become conservationists. It's sort of the Aldo Leopold mold of environmentalism, whereas the coalition is very sort of oriented to requiring the Fish and Wildlife Service on fisheries issues, and on marine fisheries issues the National Marine Fisheries Service, to follow the law and do the biological opinions and—

Lage: More regulation oriented—

07-00:21:51

Graff: More regulation.

Lage: —instead of winning over—

07-00:21:54

Graff: Right, right. That was an evolution, over time. I think I've mentioned in an earlier interview, that our initial model was "sue the bastards."

Lage: [laughs] Yes, right. That was spoken, not just understood?

07-00:22:14

Graff: Yes. Oh, absolutely, yes.

Lage: Yes, of course, that's the way EDF started, with the DDT suit, it sounds like.

07-00:22:21

Graff: It's true. But it's interesting, there's a guy who goes back even further than I do, here in California, by the name of Bill Kier, K-I-E-R. And Bill worked in the legislature and for both the Department of Water Resources and I think maybe for the bureau [of reclamation], in the sixties. And he went to the trouble of contacting Vic Yannacone, whom I've never met, but who ended up splitting— I don't know if you've read that early stuff.

Lage: I have. And I've heard people describe Vic Yannacone. [laughs]

07-00:23:00

Graff: Anyway, the origins of EDF pre-California were basically the scientists, who were mainly at Stony Brook and Brookhaven, enlisting Vic to file the first DDT suits. The first one on Long Island, and then in the states; eventually, against the federal government. [coughs] I had real coughing fits yesterday afternoon; I hope it doesn't interfere today too much. What was I going to say? [coughs]

Lage: About Yannacone.

07-00:23:49

Graff: Yes, so Bill has been harassing me from the left on EDF's nuanced position on— not on storage, on conveyance, in connection with today's debates over

legislation in Sacramento, and generally, over the peripheral canal. And his version of EDF's origins is through the eyes of Vic Yannacone.

Lage: Oh, I see.

07-00:24:21

Graff: So I haven't kind of pushed back very hard on—

Lage: So did Vic Yannacone feel that when he was let go, or however you want to put it, he thought that was an ideological split?

07-00:24:34

Graff: Yes. And I think he resented the scientists who pushed him out. And I probably should go back and look at *Acorn Days*, see how they describe it. I've been telling—

Lage: It's not too deeply described.

07-00:24:52

Graff: No. Well, maybe the oral histories of Charlie and Art and Bob Smolker. But anyway, whatever the personalities, there is this tension. And I've always been of the view—and I was very active in the club in the early years, *my* early years—that it's a complementary relationship. And sure, there's some hard feelings from time to time; but for the professionals, the scientists and the lawyers to be successful, you have to have a movement. It can't just be expertise.

Lage: And so different roles for these different groups.

07-00:25:44

Graff: Different roles for different groups.

Lage: Rather than a conflict, you think.

07-00:25:46

Graff: Yes. But people generally take things personally. I see that today and I saw it then. There were a lot of hard feelings at the time of the peripheral canal and in other controversies.

Lage: Yes, well, we're going to talk about that later, but let's come back to it because in that case, the club, initially at least, was on the more conservative end—

07-00:26:12

Graff: That's correct.

Lage: —than EDF. But we can come back to that.

07-00:26:16

Graff:

But the Left within the club prevailed, really. Well, it did formally because the club opposed, I guess it was Prop 9, the referendum. But anyway, let's skip over that for now. Other names I'll just bring up, they came along somewhat later. Michael Bean, I've mentioned. Jim Tripp joined the New York team and is still going strong. He must be sixty-nine or seventy.

Lage:

And he was a lawyer or—?

07-00:26:57

Graff:

He was a lawyer. He developed expertise in a lot of different areas. He's essentially an honorary Louisianan, because he's done a lot of work on the protection of New Orleans and the protection of wetlands and— What do they call it down there? There's this dead zone at the mouth of the Mississippi. He's also done a lot of work on land development rights. He's more recently done a lot of work on climate. Did a lot of work on Long Island. He lives in New York City, but he has a place in Bellport, I think. Terrifically—what's the right word?—multifaceted. A very nice guy. The book on him in recent years—I don't know if it's still true—was that he was too scattered, that he was trying to do too many things. And the guy's a total workaholic. But I just think he's brilliant and a great guy. So he came along.

Lage:

And does he have an ideological point of view?

07-00:28:19

Graff:

Well, he came from the US Attorney's Office. And he was fairly conservative, initially, but he's a true blue environmentalist. But he also works with business. So I'd say in that sense, he's tracked EDF's evolution. He started as a litigator. Unlike me, he still is a litigator, although a lot less so. I've always viewed it, for myself, as very difficult to litigate, on the one hand, and to do more general advocacy work on the other.

Lage:

Litigation and policy work are—

07-00:29:03

Graff:

Well, it's just litigation has deadlines and rhythms of its own. And you're caught in those deadlines. So if there's a hearing in Sacramento on a bill or on a regulation, it's very hard to pull yourself away from a piece of litigation to do that. Particularly in a small operation, as EDF was in its early years. I sort of marvel, looking back at these files that Stony Brook has, that I was somewhat multifaceted.

Lage:

Right. There's amazing variety.

07-00:29:39

Graff:

Yes. But that became harder over the years and I pulled back on most everything but water. I mentioned there's a video that the EDF board did as a sort of retirement thing for me, that was first shown in, I think, February of '08, that bears on this. Now I'm forgetting why it does. I don't know.

Anyway. [Lage chuckles] It'll come back to me. But in the early days, I was doing energy, I was doing water, I was doing some pesticides, I was doing air. There just wasn't—

Lage: Well, it was a very small office.

07-00:30:33

Graff: Very small office. Yes. And so the whole question of how much can you really get done—

Lage: And how much can you follow through?

07-00:30:41

Graff: Follow through, right. And one of my regrets, I think—and I think it's less of a regret for David and Zach and Dan Kirshner—maybe not for Dan—was that when we had our big victories vis-à-vis the utilities in the early eighties—the cancellation of Allen-Warner Valley, the pulling back on nuclear power— We had gone to other states—to Arkansas, to upstate New York.

Lage: We have to talk about all that.

07-00:31:15

Graff: Yes. Michigan, Wisconsin, I think. But basically, Zach, early on, got bored and handed off the technical stuff to Kirshner. And David Roe got bored. He wrote the book, but then when he came back, he didn't want to do energy anymore. And I was talking about the difference between EDF and NRDC. For I'm guessing at roughly a ten- to fifteen-year period, late seventies into the eighties, they became significantly larger than we were. And there was even discussion in the late Janet Brown period, when things were falling apart administratively and there was a big issue, which was spearheaded by Janet and by Frank Loy, L-O-Y, who was the chairman of the board at the time, to move our headquarters from New York to Washington. We three, Zach and David and I, and Michael Oppenheimer—who was another great EDF star that I was going to get to, but in the New York office, who originally interviewed with us out here—kind of said no way. And there was kind of— I'm slightly exaggerating, but sort of a move worthy of the Baltimore Colts when they moved to Indianapolis. [Lage laughs] The organization was simply moved, at a board meeting in Washington that was dominated by Washington board members. This was in late 1983. And Janet, who lived in Washington, had committed to the staff and the board that she was comfortable commuting. Her husband was in the State Department and was overseas a lot. Anyway, the organization was moved.

Lage: Just like that.

07-00:33:16

Graff: Just like that.

Lage: After you'd already expressed—

07-00:33:19

Graff: Well, everybody knew kind of what— No, I shouldn't say that. There were some people in New York and California who were prominent in the staff who were very much against the move.

Lage: Yes. Including yourself.

07-00:33:34

Graff: Including myself.

Lage: Well, why were you against it? Did it have something to do with Washington?

07-00:33:37

Graff: Yes. I'll explain that. Yes, it did have to do with Washington. Our feeling was we would become just like everybody else, that— I can't remember—Sierra Club had a big presence there, National Wildlife Federation, Defenders of Wildlife, Conservation Foundation, others. And we would have been a lobbying organization. So we raised a big ruckus. And ultimately, the dual outcome, without naming names too directly, was that Janet left the organization. And there was an important vote, a revote, in January of '84, to reverse the decision to move, and the organization stayed in New York.

I should've mentioned that early on—I'm not sure of the year, but somewhere in the mid- to late seventies, probably closer to mid-seventies—the organization's headquarters had moved from Long Island to New York City, which was a somewhat controversial move there. Marion Rogers, in her book *Acorn Days*, describes it as disruptive for some of the staff out there. But she and Vi Paczka, who were both administrative staff in Setauket, made the move and stayed with the organization for some years after that. They were both in their sixties, I think, by the time they left. Maybe even seventies, I don't know.

Lage: She does a beautiful job [chuckles] giving a sense of herself and Vi and everybody.

07-00:35:31

Graff: Right, right.

Lage: I don't know if you see them as good profiles or not, but—

07-00:35:35

Graff: Oh, no. No, she's a terrific writer, too.

Lage: Yes, really.

07-00:35:38

Graff: I can't remember which one it was, but when the last of the two left the organization, I became the most senior staffer.

Lage: Oh, really?

07-00:35:52

Graff: Right. And that lasted until February of this year, '09. But Tripp's going to catch me, in terms of tenure.

Lage: In terms of length of—

07-00:36:06

Graff: He came in '73.

Lage: So did you not officially retire until this year, February?

07-00:36:11

Graff: That's right, February '09. I got sick, or I was diagnosed as being sick, in the summer of '07. And I can't remember exactly when, but sometime not too long thereafter, I went part-time and I stepped down as regional director. But I stayed on staff until February '09, for complicated reasons, both personal and EDF-wise. And then the last person I'll mention from the old staff was Ellen Silbergeld, who was sort of the first major person in the toxics field for us. She was a professor at Johns Hopkins and all her tenure at EDF, I think, commuted from Baltimore to the DC office. Helen was a toxicologist, I think, by training. And eventually, won a MacArthur and really spearheaded the strengthening of the toxics program. And she and David Roe ended up working together a lot when David sort of reinvented himself as a toxics expert.

Lage: So there was a lot of interaction between the various offices, it sounds like.

07-00:37:27

Graff: Between the offices in those days. And particularly, it was not policed very much.

Lage: It was informal? Is that you mean?

07-00:37:36

Graff: Yes, informal is maybe a better word. But none of them—not Arlie, not Janet—took a great interest in what exactly we were doing and why we were doing it.

Lage: Oh, interesting.

07-00:37:53

Graff: They obviously had the ultimate responsibility, but mostly delegated.

Lage: And were they responsible for helping with the fundraising?

07-00:38:04

Graff: Yes. And, well, I was going to say about NRDC, there was a brief period—at least I think it was brief—where there was a move on to—

Lage: To merge?

07-00:38:15

Graff: —consolidate and merge the organizations. This was when Janet was executive director. And I think if our financial situation had stayed as problematic as it was at that time, it might've happened. It would've been very difficult, because there were different cultures and—

Lage: How were the cultures different, as you understand it?

07-00:38:43

Graff: Well, I'm not sure it's *as* true today as it was then, but EDF, although it had its sue-the-bastards motto, was really an organization founded by scientists. And ultimately, economists joined in. And the lawyers were somewhat secondary. Whereas NRDC was founded by lawyers and the initial group was all lawyers. Now, they eventually saw the wisdom of bringing on scientists, and even more eventually, economists. They were almost anti-economics in the early days, *their* early days. Now, I had some really good friends in the California office of NRDC when it was founded. A year after, or within a year of when EDF was founded out here, they were sent out and they were in Palo Alto. And two of the principles were John Leshy, whom I've mentioned, and John Bryson, who eventually left to go into the Brown administration and ultimately became CEO of Southern Cal Edison.

Lage: Oh, that's an interesting trajectory.

07-00:40:06

Graff: Evolution. And John is probably mentioned in David's book, because he started out in the Water Board, but eventually became president of the PUC, at the time when some of the major decisions on our cases were being made. And John is— my view of him is that he's somewhat of a conservative man. And I don't mean that so much as politically conservative as kind of the way he approaches things.

Lage: His temperament.

07-00:40:41

Graff: Temperamentally. It was interesting, later, much later on, his daughter was an intern of ours. But John took measured steps when he was on the good guys' side, so to speak. And as a utility executive, eventually, Southern Cal Edison turned out to be not as progressive, at least on some issues, as PG&E.

Lage: Oh, interesting. So he didn't bring that environmental world into the—

07-00:41:21

Graff: Well, he serves on boards, that kind of thing. But the original activist was not that much demonstrated as an Edison president and CEO. I don't have the details at my fingertips, but others, I think, would vouch for that. In fact, I became quite friendly— I mentioned that I wanted to talk about a couple of trips I took. One of the first trips, even before they became known as CFEE trips, California Foundation for the Environment and the Economy, when it was still just CCEEB, California Counsel for Environmental and Economic Balance—

Lage: And that was something Edmund Brown, Senior, was involved with.

07-00:42:17

Graff: Pat Brown. Pat Brown set it up. And he hired his first president, Mike Peevey, who had been staff to the AFL- CIO. Mike also had run for public office against Peter Behr in Marin.

Lage: Oh, he had?

07-00:42:38

Graff: In the days when Republicans could still be elected up there.

Lage: [laughs] Well Peter Behr is Republican in name only.

07-00:42:45

Graff: Right. But even that wouldn't have saved him later. Anyway, Mike's first trip was to Germany, Sweden and England, to look at cogeneration projects. And that was really my first opportunity to really get to know our executives at the utilities. And the two that—

Lage: Oh, so he took utility people.

07-00:43:19

Graff: Oh, yes, utility people, government people, and a couple of enviros. But I was the only Californian enviro to go.

Lage: What did you call yourself? Enviro?

07-00:43:34

Graff: Enviro, yes, short for environmentalist. Howard Allen—who was then, I think, still exec— maybe he was already president of Southern Cal Edison, who was known as a tough guy—and I became friendly on that trip. It was a lot harder to be friendly with Bart [Barton] Shackelford, who was the top PG&E executive.

Lage: Were you already meeting with him?

07-00:44:05

Graff: We were already— oh yes, oh yes, oh yes. But Howard was a lawyer. Bart was a technical guy. And he actually got interested in these cogeneration projects that we reviewed in German and Sweden and England. He really wanted to know how the process worked and how successful was it and what were some of the institutional arrangements and the like. I always viewed him as hard to access. But we did become Bart and Tom, rather than Mr. Shackelford. Much later, when he retired, he became a big supporter of our water work.

Lage: Oh, really? You mean financial supporter or just—

07-00:44:55

Graff: No, just endorsement, basically. And PG&E did not take a position, if I remember correctly, on the peripheral canal. They had San Joaquin Valley interests and Northern California interests. But his personal view was that it was a terrible thing, and he was happy that we were out there fighting it. He was also a supporter of water marketing. He was a Marin resident. There were two Marin residents who were instrumental, very instrumental in the water marketing world; the other one was Ted Wellman, who was an executive at Chevron.

Lage: Wellman?

07-00:45:43

Graff: W-E-L-L-M-A-N. I don't know what title he had, but he was a big shot in the Marin Conservation League, even though he worked for Chevron. He lived to be quite old. And eventually, when he felt he was declining, he committed suicide when he was in his late eighties. But Ted and the Marin Conservation League were big supporters of ours. Again, not so much financially as morally.

Lage: Endorsement-type—

07-00:46:10

Graff: —morally and endorsements.

Lage: For water work.

07-00:46:12

Graff: Right. And Ted was influential with environmentalists. Oh, but the one interesting thing about Ted was way back, I think in the late fifties, early sixties, he was implicated in a price-fixing arrangement that Chevron and some of the other oil companies had done. He was kind of like the guy who had kind of done the Chevron side of it. And he was a numbers guy; one of the reasons he liked water marketing, I think. Anyway, Ted and Bart were both Marinites who were active in this field.

Lage: But not related to that trip?

07-00:46:43

Graff: No. Well, on the trip— No, Ted was not on the trip. I'm not sure Ted was related to the Hoover and Boxer Rebellion issues. He probably was. That was '84. That was later; we'll get to that.

So those were the staffers in the Berkeley office. I guess it was still Berkeley then. Dick Gutting was a staffer. I've hardly mentioned him.

Lage: You didn't say too much about him, I don't think. He'd replaced your first—

07-00:47:28

Graff: Mike Palmer .

Lage: Mike Palmer.

07-00:47:30

Graff: He only stayed for a couple, two, three years.

Lage: And did you hire him, or who?

07-00:47:33

Graff: Yes.

Lage: Or the board hired—

07-00:47:34

Graff: Yes. Well, I recommended his being hired. His main interest was in oceans and fisheries. And he left before too many years.

Lage: And did he come with that interest?

07-00:47:50

Graff: Yes. I can't remember why. Anyway, he ended up building a career in fisheries in Washington DC. He worked for what was, I think, still then the Merchant Marine and Fisheries Committee. And he eventually became the main lobbyist for one of the big fish industry consortiums. I'm not sure what it's called. Fishing Industries Association—probably that's not it, but something like that. But I don't think he had a great impact.

Lage: He wasn't there long.

07-00:48:27

Graff: So he would've left— David was hired in '76. He would've left before that. I think there was a vacancy for some time before David was actually pulled in. Zach came in '75, when Jerry Brown left.

Lage: Okay, so Zach— And you hired both of these people, I'm assuming.

07-00:48:47

Graff:

Yes, although much as I want to take full credit, [Lage chuckles] in Zach's case, Arlie had a significant role. Zach had one big kind of extra benefit coming in, which was totally unnecessary to having an outstanding career; but he had Ford Foundation connections and support. So he was kind of a Ford Foundation fellow in the Middle East. And as is described in David's book by him, he had kind of run out the string. I think things were getting a little hairy in Lebanon by then, where he was based, I think in Beirut. And they weren't that much better in Egypt and other places in the Middle East, so he was ready to make a change. He had gotten his PhD in integrated pest management at UC Berkeley and had good connections there, both among economists and scientists. Bob van den Bosch, who was a famous name in the field of entomology, was very close to Zach and helped sponsor his research on pest management. And I think Zach felt closer to some of the scientists than many of the economists, who he thought were too theoretical. He really did on-the-ground research about which pesticide regimen worked better. This was not theory, this was—

Lage:

But he did bring the economist's tools to it, it sounds like.

07-00:50:29

Graff:

Right. And Dick Norgaard, who's reemerged, I would say, after a number of years of not being in the forefront of economists at Berkeley—ended up doing a lot of work overseas, in Brazil, particularly; now is doing a lot on climate—was his principal thesis advisor. And Dick, among other things, was in his youth, a Grand Canyon river guide. So he was also very interested in the water work. And we worked with him a lot on both subjects.

Lage:

Zach kind of brought him in?

07-00:51:18

Graff:

Brought him in, I think. I can't remember when— But Jerry Meral, I think, and he overlapped on river running, as well.

Lage:

It's such an interesting world—

07-00:51:32

Graff:

Right, right.

Lage:

—in the way you develop all these connections. [laughs] So what did Zach bring? It sounds like he was kind of a crucial addition.

07-00:51:40

Graff:

Yes. Aside from his professional credentials, he was our new age guy. This was still the early seventies, the mid-seventies, so new age was fading.

Lage:

Was fading, you say?

07-00:51:57

Graff: Yes. There was still a lot of back-to-the-land kind of things. Oh, I did want to mention, which I'd forgotten— This relates to the electricity work. The nuclear initiative was '76.

Lage: Yes. Yes.

07-00:52:13

Graff: And my sort of personal highlight was the speech—have I mentioned this already?—at the Greek Theater.

Lage: Oh, you did. You told me, warming up the audience for Jacques Cousteau.

07-00:52:30

Graff: —Jacques Cousteau. Gives me some sympathy for Sarah Palin. [they laugh] You can get wound up when you have a big crowd that's watching what you say. Or sort of watching what you say. Anyway, Zach was an, is an, iconoclast. He essentially does what he wants, doesn't pay a whole lot of attention to the bosses or the conventional wisdom.

Lage: Did you realize that when you hired him?

07-00:53:06

Graff: I think so. It was pretty obvious. He's a big— We're sort of a Mutt and Jeff kind of combination. He's very tall and very rangy. Powerful person. To his credit, he's the one who got me running—

Lage: Oh, really?

07-00:53:23

Graff: —in the late seventies. We became friends, and our wives became friends eventually. Although when I knew him then— Well, after he returned from the Middle East, he married a woman named Karen Rogers, who was from a San Joaquin Valley farming family. And when Sharona, my wife, first came to California and we went to Zach's house, she was throwing the tarot cards. [they laugh]

Lage: Your wife was initiated into California. You told about the Thanksgiving gathering and—

07-00:54:00

Graff: Right. That was on the same trip. And it's interesting, the person for whom she was throwing the cards was a guy named Jerry Udinsky, who had been an economics classmate of Zach's, and who is a frequent— I don't think anymore, but was a frequent Republican kind of libertarian candidate for office in the East Bay. He used to run, like, for state assembly, and get 20 percent of the vote. But I guess he liked having his tarot cards read. Anyway, that was an odd first introduction.

Lage: How did you yourself fit or not with the sort of new-age ambiance in those years in the Bay Area?

07-00:54:50

Graff: I had a lot of sympathies for the sort of more prominent people in the area. Stewart Brand comes to mind. But in terms of my personal life, I was maybe not as straight as Jim Tripp, but Harvard Law School, Exeter, et cetera, will do it to you. Although as David Roe describes, I was never much of a clothes horse, so—

Lage: Yes. [laughs] He doesn't describe it quite that way. So you liked having a job where you didn't have to wear a tie and—

07-00:55:28

Graff: Oh, absolutely. Yes. And that's one plus. The other was not having to account for my hours. I hated that, at the law firm. And I'm glad that I lived a career where I didn't have to do that.

Lage: Yes. And probably Zach Willey [pronounces it Wiley] wouldn't have wanted to.

07-00:55:46

Graff: No, no.

Lage: Is that the way you say his name?

07-00:55:50

Graff: Willey. His name is actually not Zach, it's Wayne.

Lage: Oh, Wayne Willey.

07-00:56:55

Graff: Wayne R. Willey. But he took Zach on and eventually, he signed his name WRZ Willey. But he has a fierce personality. And it applies to his work, as well as to his interpersonal relations. He's also quite private. And eventually, much later, he started working at home and he almost never came to the office anymore. And I think he felt somewhat alienated from other staffers, particularly as we got larger, in the eighties.

Lage: Do you think that was just a personality thing?

07-00:56:38

Graff: I think it's personality, but I think it's also he probably got more work done. That's what he would *say*. But the feeling he evoked was of standoffishness, particularly for some of the younger staff, who were more—what's the right word?—oriented to thinking that what was on the table, in terms of policy development, was what they should work on. And he was of the view that what people should work on was what they thought would be important. It didn't have to be then; it could be ten years later.

Lage: Yes. More like a university professor, sort of.

07-00:57:22

Graff: Right. Although he also had— I don't know if contempt is too strong a word, but he didn't like the university as an institution. It was interesting, there was a celebration, I'd guess seven, eight years ago, of the Giannini Foundation. It was a joint celebration, conducted by UC Berkeley and UC Davis. Both have big Giannini presences. And they invited me to speak, as the environmentalist, and they had representatives of other sectors. I went up to David Zilberman, I think it was, and Mike Hanemann and others and said, "Why didn't you have Zach here?" A lot of the discussion was about that they weren't just academics, but they wanted to have an impact on the real world. And I said, "There's nobody out there—" And Dan Dudek, also, who we'll get to later. "Those are the guys that actually did what you are preaching today. Why didn't you have him?" And they kind of were somewhat sheepish about it. But the town/gown divide is still there and I think it's particularly hard for people in their own fields. Although it's changing. Rob Stavins, of course, he started with us, really, and then went to academia. But he's— and many of the current academics, the Sundings and Howetts and the Zilbermans are very active in policy and do a lot of consulting for environmentalists and for others.

Lage: They're not all theoretical.

07-00:59:19

Graff: No. Although there are some that still are mostly theoretical. I think part of it is economics. I think university salaries, they're adequate salaries, but they're not as fulsome, maybe, as they used to be.

Lage: Especially recently. They've gone down.

07-00:59:39

Graff: Right, right. So having other means of income helps. I mentioned Dan Kirshner's name, but only briefly. He was brought on, basically, to computerize Zach's hand-written, original theories about investment planning.

Lage: Yes, it's hard to remember how different it was before the computer was so ubiquitous.

07-01:00:09

Graff: Right, right. And Dan is a natural talent; has only a BA from Santa Cruz. And that's another thing I mentioned earlier. I think one motivation for me to come to California, and one thing I've always appreciated about it—I think it's still somewhat true—is that you're not judged by and you're not particularly asked about your academic credentials and your status. Washington is really bad at that, and the academic world and the Ivy League is bad at that. So Dan was just a BA. But he created a computer program which, for many years, was really the most usable program, and utilities bought it from us.

Lage: Right. I read that in the David Roe book.

07-01:01:06

Graff: Dan was just brilliant and won a lot of respect from his technical peers.

Lage: Did he stay with EDF for a while?

07-01:01:17

Graff: He stayed quite a long time.

Lage: Creating other programs?

07-01:01:22

Graff: Well, he did do a lot of work in transportation, where he did a lot of work on congestion pricing and on transportation alternatives, particularly ride sharing. With new technology, ride sharing is being sort of revived as an option. You even see it in little ways at the BART stops, with the—whatever they're called—the city cars, and so on.

Lage: Oh, yes. But also formal places to pick up riders.

07-01:02:04

Graff: Right, formal places. Right. And Dan tried to create a reverse-commute car pool, which was less successful because there's only one car pool lane for the reverse commute in San Francisco. And sort of organizing the more ubiquitous use of car pools on the reverse commute was hard, even with cell phones, even with designated spots. He did a lot of work on that. He also was the creator, with Michael Cameron following suit—or maybe it was Michael that was the creator, with Dan doing a lot of the technical work—on the Sunol Grade congestion pricing lane on I-680. And again, he took a fair amount of flak from the left on some of those ideas later on.

Lage: Because would the Left have wanted you to push public transportation more?

07-01:03:15

Graff: That, for sure. In fact, we had a big dispute with Peter Calthorpe and some of the funders, including Hal Harvey, who's emerged as a big player in the energy world, over—

Lage: The funders of?

07-01:03:30

Graff: Of transportation and climate work.

Lage: I see.

07-01:03:34

Graff: Over the little train from Marin to Sonoma, which is— I don't know how much you know about that, but—

Lage: I don't.

07-01:03:43

Graff: —it was turned down by voters several times, in one or the other county. It's now been approved. But we opposed one of the bond measures. And one of the reasons for that was because it was going to have very low traffic, largely because it was not a full train. It went from two tracks to one, where the northbound would have to wait while the southbound went by.

Lage: And it only went from Marin to Sonoma?

07-01:04:16

Graff: It went from the Larkspur Ferry to—Eventually to Healdsburg, but I think initially, to Santa Rosa.

Lage: So you didn't see it as a well-planned use of transportation funds.

07-01:04:28

Graff: Right. And we were promoting congestion pricing in the Novato Narrows. And it was, to some degree, an alternative. When these transportation bond measures would come along, you could maybe afford one or the other, but not both.

Lage: And how would the congestion pricing work on a commute?

07-01:04:48

Graff: Well, you would expand the highway, or you would just reverse the lanes. You could do it on the Caldecott Grade, also, although we never investigated that fully as an alternative.

Lage: Where you'd have fewer lanes.

07-01:05:06

Graff: Well, right now you have six lanes and they flip them, depending on the time of day. But you could have time-of-day pricing, as well.

Lage: I see.

07-01:05:16

Graff: Or in addition. But the analysis of that is complicated. I'm jumping to transportation all of a sudden. But Michael Cameron, whom we hired in probably the late eighties, was a protégé of Stavins, did his major transportation work initially in Southern California, with Mark Pisano, who was the head of SCAG [Southern California Association of Governments]; and also later, with Steve Eminger, who is the head of MTC [Metropolitan Transportation Commission]. And Quentin Kopp, who was Eminger's mentor, even had a bill to authorize congestion pricing on the Bay Bridge, until the '94 revolution when, both at the state and the federal levels, the Republicans took over and he got cold feet. But Quentin, by the way, and I became friends. Not so much

because of transportation work—I hope he doesn't read this—certainly not because of his personality, [they laugh] but because we both hail from Syracuse.

Lage: [laughs] Oh, I see. Well, there's a bond.

07-01:06:41

Graff: [laughs] Right.

Lage: It's interesting, you found a way to connect to people.

07-01:06:47

Graff: But he was a lot of fun. I actually enjoyed him a lot. And he used to have a radio program, after he left the legislature and before he became a judge. And I used to be a frequent guest on his program because even though I was a pinko or an ultra-green or however he saw me, I was also an orange.

Lage: An orange? Oh, yes. [laughs] Syracuse.

07-01:07:15

Graff: And then it's funny. Even recently, when high-speed rail has been in people's minds and on the ballot, he called me up to lobby me in favor of that. The recent high-speed rail thing.

Lage: Oh, down the entire state.

07-01:07:33

Graff: Right. He's the chair of the high-speed rail board and is a long time transportation maven and expert. And Steve Eminger is still, I'm sure, in close touch with him. And Mehdi Morshed was also at Stanford after Steve, and became the kind of main guy on the high-speed rail project.

Lage: And does EDF have a position on the high-speed rail? Or you yourself?

07-01:08:03

Graff: I'm skeptical on the financing. The guy who was lobbying me hardest against the high-speed rail initially was David Crane, who's Schwarzenegger's main economic advisor, and who thought— It's like most of these big projects— this goes for dams, especially—the experts always predict a much lower cost than what is eventually the fact.

Lage: Well, even the ballot measures didn't just hint that, but let you know that this was just beginning.

07-01:08:43

Graff: Right. And David Crane is much more by the book. You pursue a project when you have the money for it kind of guy. Or if not, at least you have more of the money. But I think Schwarzenegger eventually went with Kopp on the project rather than with Crane, because he likes to think big.

Lage: Yes. We should think big about our budget. But that's another story.

07-01:09:22

Graff: Sounds like today, they're making some progress. I don't know, you can't tell. I'm worried he's going to think big on water, once the budget is done. But that's for much later in our—

Lage: Okay. We're back on, after a little break here.

07-01:09:53

Graff: Well, during the break, we were talking about personalities in the early years of EDF, which I will now define as running into the early eighties.

Lage: Okay, good.

07-01:10:10

Graff: There were three of them that I was— We've already mentioned Rob Stavins, who was a fourth, and—

Lage: You didn't really talk about David Roe as a personality.

07-01:10:22

Graff: Oh, I haven't. Okay, well, I'm happy to do that. Well, David, in some ways, is the antithesis of Zach. Thinking about my own self-definition of having a suburban component, Zach wasn't suburban as much as he was rural.

Lage: That was his background?

07-01:10:47

Graff: Right. He grew up in Woodland, and he parents came from farm country in Oregon. So he was sort of up from the bootstraps, kind of. His father was a successful contractor, I think, so he didn't come from poverty, but—

Lage: He didn't come from an academic or intellectual—

07-01:11:08

Graff: Right, right. Yes, and he just had the firepower in himself. I don't know, I knew his parents pretty well. They were both very nice people and I enjoyed them, but neither of them was educated in higher institutions of learning. David was the opposite. He came from bluebloods on both sides. Went to Andover and to Yale and to Yale Law School, and had a Rhodes Scholarship, where he—

Lage: Was he there when Bill Clinton was there?

07-01:11:41

Graff: He definitely was.

Lage: I saw some reference to that in his book.

07-01:11:43

Graff:

Right. And Bob Reich and Ira Magaziner. These are all—Willie Fletcher, who's now on the Ninth Circuit—were all people he was in England with, and a lot of others that he tied into in law school and in college. David's sort of true love, I think is literature. I'm not sure why he chose to become a lawyer; I think it was kind of because he should be a professional. His father was a prominent heart surgeon, was one of the first surgeons to do open heart surgery, I think.

Lage:

Here in San Francisco?

07-01:12:30

Graff:

In San Francisco, at UCSF. And his mother, if anything, came from an even more prominent family, from the East Coast. Her father was a doctor. I think maybe also a heart surgeon, I'm not sure of that. Her sister—let me see if I have this right—was married to Senator Percy of Illinois. No, no. That's wrong, that's wrong. She was married to, I think, the son of Senator Douglas of Illinois. The person who was married to Senator Percy is Shelly Guyer's aunt, I guess. No, how does that work?

Lage:

[laughs] You're good on connections.

07-01:13:34

Graff:

Yes, I'm trying to remember. I was at Shelly and Tom's [Huntington] wedding. And their entertainment—this was at a fancy New York club, after going to one of the big cathedrals uptown, Episcopal cathedral—they had a samba band. Very Brazilian, very risqué. And I still remember the lead singer kind of shimmying up to Senator Percy. [they laugh] Anyway, that was Shelly's connection. Her mother, Carol Guyer, was the daughter of J.C. Penney.

Lage:

Now, who was Shelly?

07-01:14:20

Graff:

Shelly was someone we hired in the early eighties, really as our first successful fundraiser. And then she left us to go to Haas, to business school, and became a very successful businessperson. But I was going to mention two others, who were the first two professional women who really made an impact on public policy and the environment in California. One was Patti [Patricia] Wells, who really shepherded the wild and scenic rivers case, which I really think of as the last major piece of litigation that we engaged in where we were the lead actor. There were others where we did—

Lage:

What was the issue there? I think of it as a piece of legislation, more than a case.

07-01:15:21

Graff:

Well, the state Wild and Scenic Rivers Act was passed in '72. And we had almost no role in it. Peter Behr was the sponsor. And there's an interesting

interaction between Behr and Livermore and Reagan and Gianelli that others can tell that story much better than I. But the principal— well, there were two key elements to that legislation that make a difference. One is that it was essentially set up as a ten-year bill, with a need to renew. Or a need to renew is not accurate; an opportunity to opt out is probably a better way. And as I remember it, that was the difference between the two bills that by agreement, both went to Reagan's desk. One was Peter Behr's and the other was Randy Collier's, who was pro dam, basically pro dams.

Lage: Pro dams, but he put forth this—

07-01:16:27

Graff: Well, he put forth a wild and scenic rivers bill. But his bill made it automatically— What's the right word?

Lage: Automatically defunct in ten years?

07-01:16:40

Graff: Defunct.

Lage: That's not the right word, but—

07-01:16:41

Graff: Yes, there's a better word. There's a better word for it than that. And Peter's was the opposite, that it stayed in effect unless it was overturned. But Peter's bill did have a provision that required the Department of Water Resources to make a recommendation.

Lage: I see.

07-01:17:03

Graff: Yes, in '82. And by then—

Lage: What's the story about—

07-01:17:07

Graff: Well, it didn't happen in the Jerry Brown era.

Lage: Well, but you said there is an interesting story about Gianelli and Reagan and Livermore and Behr.

07-01:17:18

Graff: Well, Gianelli wanted the Collier bill and Livermore wanted the Behr bill. And they duked it out and Reagan went with Livermore. Ike told me that story.

Lage: Yes. Peter Behr thought it was because he was the Republican.

07-01:17:37

Graff: Well, could've been.

Lage: Despite the fact that his bill was more progressive.

07-01:17:40

Graff: Could've been. That's what Peter thought.

Lage: That's what he said.

07-01:17:45

Graff: Oh, really?

Lage: Yes.

07-01:17:47

Graff: I never talked to Peter about it but I'm not going to psychoanalyze Reagan's decisions. [laughs]

Lage: [laughs] Right. Who knows? So anyway, '82 is really when you guys were involved.

07-01:18:03

Graff: But related, the other piece of wild and scenic rivers—and both of these things were embroiled in the peripheral canal campaign later—was that the peripheral canal was viewed as the missing link to develop water on the north coast, in Round Valley and so on, which Lew Butler was involved in somewhat. So I don't remember all the ins and outs, and that was a long battle. Took five years.

Lage: The peripheral canal or the—

07-01:18:47

Graff: The peripheral canal.

Lage: Yes. Okay, yes.

07-01:18:48

Graff: But wild and scenic rivers was intertwined with that.

Lage: Right. Because somehow, it was part of the legislation that wild and scenic rivers would be—

07-01:18:56

Graff: Right, there was a Wild and Scenic Rivers Act that constitutionalized the protection at the state level. And that was passed in the election— No, that was on the November— When was that. That was Prop 8, I think. I think it had been passed previous to—

Lage: We can look this up and talk about it in connection to the peripheral canal, maybe.

07-01:19:29

Graff:

[over Lage] Yes, I think we should talk about it. But I can't remember the exact connection, but Huey Johnson and his by-then deputy, Kirk Marckwald applied to Cecil Andrus in mid-1990, for federal wild and scenic river protection for the Eel, the Smith—there's a third river up there—and the lower American, all of which had some version of state protection by then. And in record time, the federal administration approved that request, including the production of a final environmental impact statement. Cecil Andrus signed the federal protection on his way out the door, on January 20, 1981, and that action was immediately contested in court by the timber and water interests.

With remarkable prescience, or luck, we intervened on the side of the state and federal governments. Very soon thereafter, James Watt pulled the federal government out of the case. And eventually—I can't remember—I think it was George Deukmejian as governor who pulled the state out of the case. So the only remaining defendant was EDF. I think we had codefendants, but we were the main actors defending the action. But eventually, the Ninth Circuit ruled that the action was legal and federal protection remained. And Patti Wells, along with Brian Gray, who was then a fairly young professor at Hastings law school, were the lawyers in that case. I kind of kibitzed from afar, but they did it.

Lage:

An important case.

07-01:21:56

Graff:

So that was Patti's great contribution. She also did other things. But she eventually left and moved to Colorado. Briefly was, I think, associated with our Colorado office, but I think when it moved to Boulder, for I don't know what reason, she— And then she married and had babies. She reentered the picture as the general counsel at the Denver Water Board.

Lage:

It's so interesting, the number of environmental lawyers who went over to the other side, shall we say.

07-01:22:29

Graff:

Right, so to speak. But the Denver Water Board, by that time, was much more aggressive than comparable water agencies in California.

Lage:

I see.

07-01:22:38

Graff:

And she was also, for a while, a city attorney in Denver, when Federico Peña was the mayor. And I was somewhat surprised that she didn't end up in the Clinton administration. But she's remained a— not so much a friend; we exchange Christmas cards or whatever.

Lage:

You didn't really finish with David Roe. Although now you're onto the women. Maybe finish with the other prominent women.

07-01:23:08

Graff: Well, the other prominent women. I mentioned Ellen Silbergeld nationally, but the other one locally was Terry Young.

07-01:23:17

Graff: Terry. Terry, T-E-R-R-Y. Interesting name, because when you read it, you don't know whether it's a male or female. Anyway, she came aboard to help Zach and David work on pesticide issues, toxics issues. She has her PhD, also from Berkeley, in I think, agricultural chemistry or something like that. Or just in chemistry, I don't know. Anyway, she's a chemist. But she knows pesticides. And she ended up being my principal coworker on drainage issues, and has become really the lead environmentalist in the state on agricultural drainage. Which became a major bone of contention, first between Westlands and the federal government, and eventually between Westlands and to some the degree, the federal government and the environmental community.

Lage:

So this is something we're going to want to talk about—

07-01:24:26

Graff: Talk about later.

Lage:

—as a later issue.

07-01:24:29

Graff: I think Terry was connected to the one big effort we made to work with Westlands on a research project to try and come up with solutions to the drainage problem. Zach worked on that quite a bit from his agricultural background. Terry was involved. So Patti and Terry were our gender integration in our office.

Lage:

Was that an effort that you made, to have more women?

07-01:25:07

Graff: I'm pretty sure we were conscious of it. And it remains so. Now the organization's much more diversity conscious, both gender-wise and race-wise than we were in the early days, even though that was— I had one intern in the very early days from Boalt, who was a really nice guy but was clearly a reach, in terms of his background, for Boalt and for us.

Lage:

And was he minority?

07-01:25:59

Graff: He was a minority, he's black. Anyway, we made efforts over the years to have minority interns and now are more integrated. Although our office is not as integrated as EDF— or the San Francisco office is not as integrated as others. One of our later prominent scientists, who's done amazing work in the fisheries field, is Rod Fujita. He's of Asian, Japanese descent. But at least gender-wise, we broke the ice with Terry, who remained with us either as a full-time or part-time staffer, or ultimately, a consultant, until very recently.

And now she's working more generally for the environmental community. Her husband Doug was a prominent lawyer, and is, at the Farella Braun and Martel firm. And Deborah Moore comes into the story later. Also was married to a lawyer at Farella. And one of the interesting, somewhat unfortunate things, I think still, for females in the nonprofit world is that salaries are not as good as alternatives. If they've gone to the trouble of getting the PhD or the law degree or whatever it is, it's somewhat of a sacrifice for them.

Lage: But it is for the men, too.

07-01:27:55

Graff: It is for the men, too. It tends to be that if you're in earlier, as I was, my salary was still higher, even till I retired. Although I don't know that for sure. And I think some of the administrators that came in after me eventually outranked me in salary, as well as title. Anyway, it helps to have a husband who's in private practice.

Lage: Yes. Did salaries become an issue? I think I've noticed this in the Sierra Club. As you get more real professionals in on your staff, which you had from the beginning—

07-01:28:37

Graff: Right.

Lage: —and they're there more long term, they don't want the hand-to-mouth existence that maybe the seventies fostered.

07-01:28:48

Graff: That's right. And there was a big issue between Mastbaum and Arlie Schardt, even though Mastbaum, for many years, was unmarried; and married then to a dean at the University of Colorado, and then divorced, so he's never had an elaborate lifestyle. But he resented being a second-class citizen. So salaries, in any institution, maybe—

Lage: Yes, make—

07-01:29:21

Graff: That reminds me of a Ralph Nader story. I've never been a fan of Ralph Nader's. But one of my early board positions was on the board of the Berkeley Law Foundation. Do you know what the Berkeley Law Foundation is? Probably not.

Lage: Not exactly.

07-01:29:40

Graff: It never rose to great prominence. But it was a brainstorm of law students in the early seventies, like the first couple years I was at EDF, to create an institution that would get those who went to private practice, particularly, to contribute to a fund that would seed law students leaving Boalt, particularly—

Lage: To do public interest work?

07-01:30:14

Graff: —to do public interest work. And Nader had the same idea, on a national scale, at roughly the same time.

Lage: As these students.

07-01:30:24

Graff: As BLF, which by then was already established about a year or two. Anyway, Stanford law students—as always, the red or the cardinal trailing the blue by a couple years— That’s not fair. They often lead.

Lage: Yes.

07-01:30:51

Graff: I have a cousin who’s a Nobel laureate down there, and other good friends. Anyway, what was I going to say?

Lage: Nader.

07-01:31:03

Graff: Yes. So they invited Nader to a meeting in San Francisco. I don’t know whether Nader sought them out or they sought Nader out, but he was the principal speaker. So I and a couple of the students decided, basically, to crash the meeting. We waited patiently until it was over. Nader had finished his pitch, and then— The Stanford people knew we were going to be there. I raised my hand and I said, “I just want to propose an alternative to the Nader approach, and I think it’s going to work better for you, as it has for the students here. Which is that there’s much more loyalty to one’s own institution than to a national group whose— Once you give it to Ralph Nader, who knows where the money’ll go.” [chuckles] I don’t know if I used those words, but—

Lage: You don’t know what school it might benefit.

07-01:32:04

Graff: Might benefit, right.

Lage: Or which students.

07-01:32:06

Graff: Yes. Anyway, he got really ticked off and said, “This is *my* meeting and you shouldn’t be allowed— If you want to make this presentation, you do it at somebody else’s meeting.” It was classic Nader, as far as I was concerned. It’s just the way he is and was.

Lage: What put you off about Nader before that meeting?

07-01:32:32

Graff: Well, part of it was the holier than thou approach to life. He would never think of breaking bread with a utility executive. Also I think his salary policy was wrong.

Lage: Oh, that's what brought up this story, the salary policy in his organization, you mean?

07-01:32:55

Graff: Yes, yes. He's always paid minimal salaries. I'm not current on what he does now and whether he even pays attention when he's had successors. And I've had lots of friends who've gone to Nader, or Nader organizations, PIRGs [Public Interest Research Groups]. The guy who runs Sacramento PIRG, CALPIRG is a good guy. I've known plenty of people. But it came up in Hoover because Nader never really, I think, played a personal role, but some of the Nader organizations—

Lage: In the Hoover Dam issue.

07-01:33:32

Graff: —yes—ended up on the other side. Because public power, which is one of his favorite campaigns, was on the other side.

Lage: Well, okay. Good, we'll—

07-01:33:46

Graff: Anyway, so that gets us through— Well, David Roe.

Lage: Yes, you didn't finish David Roe.

07-01:33:51

Graff: Let me finish up David Roe. So David Roe came from a blueblood background. And he also had a father who was a big surgeon. So I think that was instrumental—I never really asked him this—in his going to law school rather than, say, getting a PhD on James Joyce, which is his real love in life.

He just gave me a book, or loaned me a book, praising the author's style. And it's *very* British. It's a British author, writing about Abraham Lincoln. A biography. It's an interesting book so far. I'm only a quarter of the way through it.

Lage: So he became a lawyer, but did he go into a private firm initially, or—?

07-01:34:40

Graff: [over Lage] Anyway, so he became a lawyer. Well, yes. He did. Well, he describes in his book, I think, he applied to the public interest firms and didn't get a job, and so— This was after a clerkship. He was then married to a doctor at UCSF. Or maybe she was a resident; I'm not sure. By the time I knew him,

he'd already split. But well, a year after he went to that firm, I contacted him and he made the jump.

Lage: And had he had involvement with the environment, or shown any interest? Or did you just like his lawyering?

07-01:35:29

Graff: The guy's a brilliant guy. What motivated— He was a big sailor, his father was a big sailor. But I don't think he was a major backpacker or otherwise engaged in environmentalism. But his credentials were pretty astounding.

Lage: So the three of you, I assume, were kind of the main people at one time. You and Roe and Zach Willey. And you seem so different. [laughs] How did it work?

07-01:36:10

Graff: It worked fine, it worked very well. Looking at it only from my perspective— I think this is unfair to the other two. I see myself as having a capacity to work well and be friends with people of very different backgrounds. Certainly, it would've been unlikely, let's put it this way, for Zach to have been the fifth wheel on Ben and Jane Roe's sailing trip in the Caribbean. [Lage laughs] But David and Zach got along fine. And David was the lawyer for most of what became our signature triumph in the electricity world in California.

Lage: And Zach was the economist.

07-01:37:21

Graff: Was the economist. And Dan [Kirshner] was ultimately the computer guy. And the three of them did almost all the legal work after I handed it off to David [Roe], with David Mastbaum playing a role on the Energy Commission side and the PUC side.

Lage: Now before that—we're probably running out of time here—but David Roe mentions, and it's also in these files, something about Palau.

07-01:37:51

Graff: What David emphasizes is that we, Zach and I, did not tell him what to do. And maybe that relates to my personal experience with my father, I don't know, or Zach's independence, or both. But that, I think, was accurate. And I don't remember how it happened, but somebody called us and said, "There's this awful thing happening out in the far Pacific, and somebody should do something about it." So we sort of said, well—

Lage: It's a little out of your range. You were the farthest west office.

07-01:38:30

Graff: We were the Pacific office. Anyway, so David took that on and had some fun with it and the superport. I'm sure there were reasons other than our advocacy that they didn't do it, whether it had to do with territorial interests or that the

oil market turned in '78-79, with the Iran crisis, or what it was. But anyway, that was his first major project. I remember he was very proud of sending a telegram—people still sent telegrams in those days—to some official in Palau, and he went out there and met the chief. And the chief came to Washington, I think. So it was a non-trivial project.

Lage: Yes. How long did he stay with you, David?

07-01:39:28

Graff: David Roe? Until, I would guess, '03 or '04, something like that. So close to thirty years.

Lage: Oh, so he was long-term.

07-01:39:41

Graff: Yes. And Zach's still there. Zach moved to Oregon. That's a different story.

Lage: But he's still connected with the EDF.

07-01:39:51

Graff: Connected to the EDF, right. Anyway, so David's personality. A lot of his writing—he wrote the book, as you know—and editing, to the detriment of some—

Lage: [laughs] He'd edit some of your—

07-01:40:13

Graff: Well, I had sufficient either status or self-confidence or whatever to know to accept what I wanted and not what I didn't want. But for some of the younger people in the office, it was a little more challenging. But he likes the editing. But he also likes the craftsmanship. And so he's really the principal, and I would say close to the sole author, much later, of Prop 65, which remains an icon of the initiative world. And there's a political story around that—

Lage: Right, but we should get to—

07-01:40:54

Graff: —that we'll get to later. But the interesting thing there is that the presumed co-authors of Prop 65 were David and Carl Pope. Al Meyerhoff of NRDC became a big Prop 65 advocate. But I think Al would admit, I don't know— Well, he can't admit anything anymore; he died recently. I don't know whether he would've wanted some of the credit for the actual proposition, but I'm confident that David wrote that. He always gives me credit for the politics. But what he did that was very clever politically, and as a matter of initiative writing, was that it's a very short and sweet initiative. And the pressure is always to add things and make the language much more sort of prolix and so on, which was the downfall of Big Green in 1990 [Proposition 128, the Environmental Protection Act], about which I have some stories I'll talk about later, also. But David's craftsmanship was very significant in Prop

65. And interestingly, neither Zach nor I was a big fan of Prop 65, although it was David's thing and it went forward without a lot of controversy internally in EDF. But when the Big Green proposition came along, internally both Zach and I boasted that it was the one time in my recollection of the three of us working together that a controversy blew up to where all the younger people in the office, who were by then substantial in number, were given the task of deciding what we should do.

Lage: Ah. Did David Roe support it?

07-01:43:12

Graff: He did support it, although he recognized some of its problems. I don't want to go into the politics of why he supported it and how it came to be, but just quickly—

Lage: But later, could we?

07-01:43:27

Graff: Yes, later. Alan Cranston was reelected in 1986 because of Prop 65. And by the time the next statewide election rolled around, John Van de Kamp and Tom Hayden decided they wanted an initiative on which to hitch their wagons. And David, having been a big player in Prop 65, was asked by Van de Kamp and by Hayden to be a player again in '90. But by then, the cat was out of the bag and lots of other people got into it—Rich Jacobs, who was working for Van de Kamp, and Pope and Meyerhoff and lots of others—and the proposition just kept getting bigger and bigger.

Lage: The kitchen sink. [laughs]

07-01:44:23

Graff: The kitchen sink. And Zach and I said, this is dumb. Anyway, remind me to get back to that.

Lage: I think it's interesting, and this whole issue of propositions, we keep kind of skirting.

07-01:44:34

Graff: Right, right.

Lage: But Prop 65—

07-01:44:38

Graff: Well, I'll disclose a little bit.

Lage: —was simple and—

07-01:44:41

Graff: Right. Much simpler. I even did a backdoor, not collaboration but set of conversations with Otto Boss, who was the main policy guy for Pete Wilson,

on Big Green. Originally— I don't know if Pete ever knew about that; he probably did. What was I going to say about that? Oh, yes. Big Green became a bone of contention in the Democratic primary between Van de Kamp and Feinstein. And she, against her better judgment, ended up endorsing it because she felt she had to. And I was kind of advising her at that time on other issues, on water issues. But when it came to the public vote, it was overwhelming. It lost big-time. [coughs] Why don't we stop there?

Lage: Yes, I think it's a good time to stop and pick up later.

Interview 5: July 31, 2009

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Lage: All right. We're on. Today is July 31, 2009, and this is our audiofile number eight. It's our fifth session of the oral history with Tom Graff. Okay, Tom. We've had a nice review, you and I together, of what we've covered and what's left. And today we were going to talk mainly about your involvement in electricity issues. But I think we had decided to maybe start with some thought about where you stand in the annals of environmental law?

08-00:00:40

Graff: Okay. Good. Yeah, EDF's motto when I first joined was "Sue the bastards." And particularly in my first— well, really three or four years at EDF, in the early seventies, I complied with the motto.

Lage: It was sort of what you thought you were expected to do—

08-00:01:04

Graff: Right.

Lage: —a lot of litigation. Was this a motto that they spoke about openly, or it was just in the background?

08-00:01:15

Graff: No, it was definitely part of the landscape. It was discussed as such.

Lage: And your training.

08-00:01:24

Graff: To the extent I had training in litigation at all, it was to view issues from a litigator's point of view. But the reality, even in the early days—and certainly later, for me—was that I didn't litigate much, if at all, in the traditional way people do that, which is with depositions and interrogatories and the trappings of modern civilian procedure.

Lage: Even from the beginning, you're saying?

08-00:02:06

Graff: Even from the beginning. I'll give you a couple— The only real counter example wasn't litigation at all, but I got involved in early PUC cases, California PUC cases, which are administrative hearings. Although they're sort of formal and they have cross-examination and—

Lage: And you use your legal skills.

08-00:02:30

Graff: Your skills, right. So I did a couple cases like that. But in the cases I actually filed in court, or I was involved in in court—the Coastside case, which we've

discussed; CEQA case; the Auburn and New Melones cases, which were anti-dam environmental impact statement cases—

Lage: Sort of traditional at that time.

08-00:02:58

Graff: Right. Well, they were pretty new at that time.

Lage: But that's what was happening at the time.

08-00:03:02

Graff: Right. And then in a way, the most interesting, the litigation against East Bay MUD. They were all pretty much litigated on the pleadings.

Lage: On the what?

08-00:03:16

Graff: Pleadings. Motions for summary judgment. But not a lot of prep time with witnesses, in advance of the actual appearances in court. I had some distinguished witnesses that I put on the stand at the PUC. In particular, Bill Vickrey, who became a Nobel laureate in economics, testified on time of day pricing. Charlie Cicchetti, who was a noted economist, who later crossed swords with us in this decade, on a proposition that was on the ballot, where he identified himself as a former EDF staffer. And I did not recall that he had been a staffer; I recalled him as a consultant. So we got in a little tiff over that. And I finally decided it was not in our interest to have that go public, and so it sort of faded from view. And if I remember the initiative correctly, Cicchetti was on the side that the proponents—it was just one or two cycles ago, and had to do with alternative energy. And the guy who heads the Phoenix university [University of Phoenix], who made a huge bundle—

Lage: Yes. And then got in trouble with the law, it seems to me.

08-00:05:01

Graff: Did he? I don't know about that. But he went solo and decided to put something on the ballot, which pretty much anybody in California can do, if they have enough money. But all the major environmental groups, EDF included, thought that it was not a well drafted concept and it got in the way of prior laws that were beginning to have their effect and so on. Anyway, Charlie hired out to the proponents—

Lage: Using the name of EDF.

08-00:05:37

Graff: Using the name of EDF. But we decided giving him publicity was not necessarily in our interests. But he threatened us with lawsuits and all that.

Lage: Goodness!

08-00:05:50

Graff: Back to East Bay MUD. I remembered something that I'd forgotten but I did not know at the time we filed the suit, that was probably the most innovative suit I ever filed, or innovative legal action.

Lage: Now, tell how it was innovative. We talked about it, but really not in any depth, from a legal point of view.

08-00:06:13

Graff: There're basically two theories for getting at the fundamental tenets of California water law. It's much more complicated than I'm going to make it sound in the next couple of minutes, but basically, California water law is based on prior rights. So if you got there early, you have the water and it's almost an ownership interest. And that potentially causes a lot of problems, because what made sense and was an economic activity in 1880 or in the 1920s, when East Bay MUD really got going, does not necessarily make sense in 2009, or even in 1972.

Lage: When you filed your suit.

08-00:07:09

Graff: When I filed the suit. But challenging the prior rights system directly and saying it's outmoded is problematic, from a legal point of view. And not just because we have a conservative judiciary, both in California and nationally. There's something to be said for some form of property right in water. Anyway, so there're basically two theories that have evolved over the years to at least chip away at the prior rights, prior appropriations concept. East Bay MUD, by the way, is not directly applicable, because it's a contract with the federal government and we were challenging the contract, basically.

Lage: You mean their right is based on a contract with the federal government?

08-00:08:09

Graff: Right.

Lage: But didn't they buy up water rights, a lot of the—

08-00:08:11

Graff: Yes, that was earlier. That was much earlier. But they wanted a supplemental supply.

Lage: I see.

08-00:08:15

Graff: And our two theories in the lawsuit were, one, that any supplemental supply was a waste of water; that they could reclaim existing water and undertake conservation measures. So that's, in a way, an attack on the prior rights because it meant they had to use their prior rights more efficiently. That was our theory. The second theory was that there was unreasonable diversion of

water because they wanted the secondary supply, upstream on the American River, depriving the city and county residents of Sacramento County—as the river flowed down to the Sacramento—of recreational and environmental rights and fisheries interests.

Lage: So the place of diversion was—

08-00:09:15

Graff: The place of diversion was also an issue.

Lage: And was that an attack on the prior appropriation?

08-00:09:22

Graff: That was really an attack on the contract. In theory, both were attacks on the contract. But if you're saying, you must reclaim, that means you've got to reclaim what you already have, right?

Lage: Did you think this through on— did you draw on some thinking at the time, as you filed this—

08-00:09:48

Graff: Well, there was a young guy who had just graduated from Boalt, I think— maybe Hastings—named Steve Cavellini, C-A-V-E-L-L-I-N-I. And he and Jerry Meral were involved in kind of designing the suit. Once the suit got going, I brought in one of my quite brilliant law school classmates, by the name of Bruce Dodge, who was in one of the downtown firms in San Francisco. I think Morrison and Foerster. But it was a group effort, basically. The other innovative piece of the suit, which turned out to be the piece of it that got it noticed, ultimately, by the US Supreme Court, was that it was a tricky combination of federal and state law, because this was a federal contract with the Bureau of Reclamation. And so we debated back and forth for a long time, before filing the suit, two things. One, whether to file in federal court or state court; and two, whether to include the federal government as a defendant. We finally decided to file in state court, in Superior Court in Alameda County, and not to join the feds.

Lage: And why?

08-00:11:28

Graff: I can't remember all of the thinking, but it was basically that what we were really challenging were issues of state law, not of federal law, and not of contracting and so on, and we were better off without the feds in. And we guessed—and as it turned out, correctly—that for its own reasons, East Bay MUD also would not want the feds in the case. But it was always lurking in the background.

Lage: So you didn't sue the bureau.

08-00:12:01

Graff: No, just East Bay MUD and its directors, I think.

Lage:

I wonder why the East Bay MUD didn't want the feds in.

08-00:12:06

Graff: Well, I think because—I don't think it was because they didn't think they were reliable allies. Maybe they thought it would slow down the whole contracting and approvals. In order to make this happen, in the old formulation, they would've needed water out of the old Auburn Folsom South project, flowing down the Folsom South Canal. And Auburn Dam was already controversial. There was other litigation, ours included, going on on that. So I don't know the answer. And I think maybe they thought they could get the state courts to throw the case out, on the basis that an indispensable party, namely the federal government, was not a party. And then there's also complex jurisprudence around when the federal government can claim sovereign immunity from prosecution by private parties.

Lage:

Were you concerned that the Alameda County courts would be sympathetic to East Bay MUD?

08-00:13:11

Graff: Well, a perfect question. [Lage laughs] Only many years later, did I learn that the Superior Court judge, who's name was Brunn, behind everybody's back, ours and East Bay MUD's, asked Mike Heyman, who was then a professor at Boalt, for help in the case, because it was a complex—

Lage:

To help him sort it out?

08-00:13:40

Graff: Sort it out. And Heyman assigned, I don't know how many, but some Boalt law students. And they were working in the back rooms, unbeknownst to us.

Lage:

Is this something that happens a lot? So the judge is getting consultants--

08-00:13:55

Graff: It's like a special master, consultants, yeah.

Lage:

But it wasn't upfront.

08-00:14:01

Graff: It wasn't upfront. I don't know how I eventually learned about it, but it was interesting. I recently had a—well, maybe we'll say this somewhere, but—a chair was named in my honor at Berkeley. And at the, kind of like the swearing in ceremony or whatever it's called, David Sunding, who is now the holder of the chair, made the comment when he got up to speak, he said, "It's quite rare, for an event like this, to have two chancellors sitting in the audience." And that was Birgeneau, of course, who presided over the proceedings. This was from the Hewlett grant. And Mike [Heyman], having

had a major career post-law school professor, which is what he was [at the time of the EBMUD suit]—it was, I think, just before he became dean—came back for the ceremony, which pleased me a lot.

Lage: Now we're getting off on another topic, but how did the chair come about?

08-00:15:21

Graff: Well, it's an interesting story. It's really the benefaction of George Miller and Janet McKinley.

Lage: And we know who George Miller is now, but—

08-00:15:30

Graff: Janet's his wife. Janet is now the chair of the board of Oxfam. They both made a lot of money in a financial firm, Capital Group.

Lage: So they funded this endowed chair.

08-00:15:44

Graff: They funded the chair. And George calls me up one day and says, "You know, the usual practice here is for people to name these chairs in their own names. But I thought it made more sense to have this be done in your name."

Lage: It's really a tremendous honor.

08-00:16:02

Graff: It is. And Berkeley had to approve it and all that, but—

Lage: Is it a chair in water law or environmental law or—

08-00:16:09

Graff: It's in the College of Natural Resources.

Lage: Oh, it's not in Boalt.

08-00:16:13

Graff: It's not in Boalt, but it's College of Natural Resources. And I can show you the— They give you a very beautiful sort of glass sculpture. But I think it's something like the Thomas J. Graff Chair in— What is it? It's not just in economics. There was a fair amount of back and forth on what the precise language should be. But I'll tell you what; rather than me guess, we'll go upstairs and look at it. [The Thomas J. Graff Chair in the College of Natural Resources supports a faculty member whose scholarship focuses on water policy and economics.]

Anyway, so Mike helped the judge. And the judge wrote a quite erudite opinion on this simple little case.

Lage: The Superior Court judge.

08-00:17:07

Graff: Right.

Lage: And in your favor?

08-00:17:12

Graff: No. Well, it depends how you define favor. He ruled against us; but he put in all kinds of stuff that clearly would interest the court of appeal, so that they would take the case seriously.

Lage: Fascinating! And also considering that environmental law was sort of in its infancy, this behind-the-scenes effort of Heyman and his students would, you would think, have some impact on environmental law.

08-00:17:46

Graff: Right, and something similar happened in the Coastside case. Again, I think the judge— And this was surprising to me at the time. I should've known better, but it was in the air. Environmentalism had just come in, was coming into its own. So the judges were interested in it, too.

Lage: Sure.

08-00:18:17

Graff: Right? So the court of appeal decision in the Coastside case also showed a lot of thought. In the last few decades, there's this whole question of, do judges make law or do they interpret law? This was really a set of cases in the early seventies—and not just mine, many others, too—where judges were having to make it up as they went along.

Lage: Yes, they really had to make it up because it didn't exist.

08-00:18:52

Graff: Right. That's right. David Sive, do you know that name?

Lage: Yes, I interviewed him.

08-00:18:59

Graff: Oh, you did?

Lage: Yes.

08-00:19:00

Graff: He did stuff like that in the Con Ed case and—

Lage: The Storm King.

08-00:19:05

Graff: Storm King case, right. And then, of course, the East Bay MUD litigation, which never had witnesses. Well, it had witnesses in a much later stage, stages.

Lage: So this early part was not witnesses, it was—

08-00:19:20

Graff: It was all on pleading.

Lage: —just discussion of the law?

08-00:19:22

Graff: Right, right. Yeah. I think— I moved for summary judgment, so they assumed our facts were valid.

Lage: I see.

08-00:19:32

Graff: Which they were. But they—

Lage: They weren't disputing the facts—

08-00:19:35

Graff: They were all on the record. Right.

Lage: —they were disputing the law.

08-00:19:38

Graff: Right.

Lage: And how did you feel about the attorneys for East Bay MUD? Did they know their business?

08-00:19:43

Graff: Well, yeah, I thought so. A kind of a crusty old Irishman, Jack Reilley, was the general counsel in those days. And one of his assistants, it turned out, lived around the corner from me. Guy named Bob Helwick. And of course, Bob Maddow was there, as well.

Lage: He came on later. But maybe he was an assistant.

08-00:20:08

Graff: He came on later. Yeah, I think he went up the ranks. I wrote a letter to the board of East Bay MUD before the litigation was filed, saying, here's the things we think you've done wrong, and they ought to remedy, and at least remedy before signing the contract, basically. Or maybe they'd signed the contract, had to do with EIR. I don't know. But they ignored me, basically. And one of the people on that board was Bob Nahas. Do you know that name?

Lage: No.

08-00:20:51

Graff: He was one of the—

Lage: Nahas?

08-00:20:54

Graff: N-A-H-A-S. He was one of the people who put together the Coliseum deal as a— I think he, at that point, was an Alameda County supervisor. I don't remember the sequence exactly.

Lage: But the board hadn't turned environmental; they later got Helen Burke and some of the other [more environmentally minded directors].

08-00:21:26

Graff: Right. Well, Helen Burke. Helen and I had many connections. In the very early days, Jerry Meral was our principle Sierra Club liaison, although I joined, I think, quite early. I regret not obtaining one of those lifetime memberships.

Lage: [Lage laughs] When you could afford it.

08-00:21:51

Graff: But the East Bay MUD people, in the early days—Jack included—didn't like that these upstarts were screwing their project up.

Lage: Yeah. They had gone sort of unchallenged in the past.

08-00:22:08

Graff: Right. For many years. And of course, the board was all white males, and pretty traditional. In those days, there were still Republicans in the East Bay. What's his name, Knowland, had been the Oakland Trib publisher and he was a senator until, what? 1958, I guess. And then he decided to upend—what's his name?—Goodie Knight, and run against Pat Brown. Anyway, so they were kind of cranky in the early days. But we evolved. They were appropriate gentlemen. Maybe I'm feeling it retroactively, with rosy-colored glasses. I probably should go read their oral history version of all this, but— Anyway, it was Jack in the early days. And then, of course, the litigation went on for a long time after Judge Brunn's ruling. It went to the court of appeal.

Lage: And did you carry it on in the court of appeal?

08-00:23:15

Graff: Well, Bruce Dodge and I did the appeal brief together. And just as an aside, I think I mentioned in one of the early interviews that a cataclysmic moment in my life was when I got my grades from first year law school. I was sixth in my class, Bruce Dodge was fifth.

Lage: Oh! [they laugh]

08-00:23:43

Graff: Anyway, he's an interesting guy. We got sidetracked off the legal theories. Waste of water, unreasonable diversion, and unreasonable use were all kind of

untested theories, in terms of kind of the actual practice of a utility or of a water agency. The other big strand of law that attacked the prior rights doctrine, in some sense, was the public trust. And of course—

Lage: And was that at that time—

08-00:24:23

Graff: That was brewing at that time. And the most notable advocate of the public trust, from a legal point of view, was Joe Sax; whereas Charlie Meyers, who I mentioned earlier, was the most active proponent of using water markets as a different way of loosening prior rights. Basically, allowing sale—

Lage: But it's not really— Is that a legal theory, or just a kind of a practical accommodation to prior—

08-00:24:55

Graff: Well, that's an interesting question again, because one of the unanswered questions— Here we are thirty-five years, thirty-seven years after the National Water Commission report, on which both Sax and Meyers were staff. How much of the resistance to water markets over the years has been based on a set of legal theories, and how much has just been good old boys, or “that's the way we've always done it, that's the way we're going to keep doing it” kind of thinking.

Lage: But would the resistance be coming from the public trust people? The public trust proponents?

08-00:25:44

Graff: Well, we have critics—I'll use the old terminology—on our left who are big public trust advocates, who don't—

Lage: And they'd rather attack the doctrine of prior appropriation?

08-00:25:57

Graff: Yes, attack it head on and say, “That old use is no good anymore and it ought to be something else.” And there is some precedent in California water law. The most famous case is Joslin against Marin Municipal Water District.

Lage: And when was that?

08-00:26:19

Graff: That was in the sixties, I think. The issue there was a gravel mining operation on a stream where the growing areas of Marin wanted to use the water for municipal use. And to the surprise, I think, of many, the California Supreme Court said, if it's a higher use, the old gravel operation has to give way. So there is some—

Lage: That's quite a precedent.

08-00:26:54

Graff:

Right. But here it is forty years or more later, forty-five years, and that and the Mono Lake case—which, by the way, Bruce Dodge also was a key litigator in—have chipped away at the prior rights doctrine. And in that article I wrote in 1981, I kind of allude to the shakiness of the Imperial Irrigation District's prior rights, which also are complicated because it isn't clear that it's the district's right or the farmers' right. And it's a federal project and— But the Imperial Valley was there before the Colorado River Compact and the Hoover Dam. So none of these water law questions are easy.

So these are to some extent competing, and to some extent complementary theories for direct legal challenge or indirect legal challenge of the prior rights system. But we're 130, 140 years into the prior rights system.

Lage:

It's hard to overthrow it.

08-00:28:30

Graff:

Right.

Lage:

It looked like in Mono Lake, you or EDF suggested water marketing solutions.

08-00:28:39

Graff:

Right.

Lage:

But didn't it end up being won on the issue of public trust?

08-00:28:44

Graff:

Well, yes and no. The original decision in Audubon, National Audubon, 1983, I think, said the Mono Basin diversions were subject to the public trust. But the California Supreme Court in that case— And by the way, that case overlapped some of the East Bay MUD cases going up.

Lage:

So you're constantly having to watch what's going on.

08-00:29:12

Graff:

Right, right. They sent it back for further proceedings. And so it bounced back and forth between court and the water board. And it was— Well, when I say yes and no, the fact that we contributed indirectly through our participation— this is Zach Willey and—in the Mono Lake Group, which was convened by UCLA Extension, a really interesting character named LeRoy Graymer, who was at Berkeley for a little while before he retired. Zach and I were basically hired by the Mono Lake Group.

Lage:

Now, that's different from the Mono Lake Committee.

08-00:30:11

Graff:

Correct.

Lage: Which were private—

08-00:30:12

Graff: Right. Mono Lake Committee, the City of L.A., the Forest Service, State of California, I think, were the actual Mono Lake Group. But they agreed to commission us to look at water marketing as a way of bridging the gap that would occur if L.A. got its water cut because of the Mono diversions. Duane Georgeson was the DWP [Department of Water and Power] water division leader who was involved in that. And Martha Davis from Mono Lake Committee was involved, of course, as well. Later, Fran [Frances] Spivy-Weber, who's now on the state board [State Water Resources Control Board] — She's in the video, if you remember seeing—

Lage: Yeah, yeah.

08-00:31:11

Graff: In fact, what she says is a little weird. Fran and I are friends, but Martha and I became good friends. And Martha was always skeptical that water markets were really going to work. And Met [Metropolitan Water District of Southern California] was kibitzing and they weren't at all sure they wanted L.A. messing with what by that time had become their game.

Lage: This is the committee, the Mono Lake Committee?

08-00:31:40

Graff: No, no, DWP. Oh, they didn't care about the Mono Lake Committee.

Lage: Oh. Okay, I'm confused about who all these people are.

08-00:31:49

Graff: Well, one of the things I've learned over the years is that while they often present a united front to us, when they get in their own back rooms, there's plenty of competition and back stabbing and the like—as there is in the environmental community.

Lage: Sure.

08-00:32:07

Graff: Anyway, so we ended up presenting a case for water markets. And Zach, who's kind of a good old boy, when we— We went and visited a lot of the farmers in the Central Valley to ask them, would they consider selling water to L.A. and that kind of thing. Which is one of many such times that we ventured forth and either cut deals or discussed deals with Central Valley agriculture.

Lage: That's an interesting role.

08-00:32:44

Graff:

Yeah, it is. One of the people we talked to, one of the families— A lot of these are big family-run operations. One of the things that isn't well known about California agricultural is—and much more so, I think, than agricultural elsewhere in the country has become—it's diverse in its ownership patterns. A lot of the San Joaquin Valley farming operations are family based.

Lage:

Because you always hear of it as *the* corporate—

08-00:33:18

Graff:

As corporate agricultural.

Lage:

Of course, they're family corporations.

08-00:33:22

Graff:

Family corporations. But they're not Cargill or, I don't know, United Fruit, or big, big agricultural combines. And they may end up being so. Part of that is the legacy of the Reclamation Act, which was, in theory at least, designed to support small farms.

Lage:

I don't know, maybe you see it differently, but they seem like they're huge farms.

08-00:33:53

Graff:

Well, yes and no. For example, even to this day, we're talking to the Woolfs, who have the largest Westside farming operation. And we battle them like crazy in the courts and in Congress and in the state legislature. But one of the things that they have is a potential—and sometimes, like currently, a real—water shortage, because they're lowest on the priority list. They signed their contract with the bureau long after the other contracts were signed.

Lage:

Okay, so it's based on when you originally made your contract?

08-00:34:33

Graff:

Loosely.

Lage:

To some extent.

08-00:34:35

Graff:

Loosely. Anyway, so they have an interest in water marketing.

Lage:

To buy water?

08-00:34:41

Graff:

Yeah, to buy. Now, that's controversial with people on our left, who think that they ought to be shut down. They have selenium in their soils; they cause pollution problems. If you believe in the priority system, it's the most recent users who are having incrementally, the largest impact on the delta. So if you

just shut down the Westlands—this is slightly exaggerating—you'd solve most of the delta problems.

Lage: So what's your opinion about that?

08-00:35:22

Graff: I think a shutdown is unreasonable. And in fact, the Westside agriculture people—through necessity, mostly, but also because they're reasonably big and smart business people—have invested in water conservation, irrigation efficiency technologies and practices far beyond most of the rest of California agriculture.

Lage: Is this Westlands Water District you're talking about?

08-00:35:58

Graff: Yeah.

Lage: I always hear it as the culprit. Or at one time, anyway.

08-00:36:03

Graff: Well, it *is* the culprit, in many ways.

Lage: But you think they have better water conservation than other—

08-00:36:11

Graff: Oh, no doubt. Oh, no doubt.

Lage: By necessity.

08-00:36:15

Graff: By necessity, yeah. Well, their water is really expensive. Particularly compared to the Imperial and to the exchange contractors who are just north of them, who have much older rights and whose water costs are 10 percent, maybe less--

Lage: [over Graff] And that seems like such an unlikely place to grow crops, somehow.

08-00:36:39

Graff: Well, the soil is good, except for the toxins, the selenium and other constituents. But it's good soil, from a growing point of view. Their yields are very high. Sometimes they have problems with salty groundwater. There's a lot to talk about on this.

Lage: Here we are on water; [laughs] we were going to talk about electricity.

08-00:36:59

Graff: Anyway, this was an outgrowth of East Bay MUD. So public trust, waste and unreasonable use, which did change, the numbering of the constitution. But what is it now? It's article ten, section three. I could have that wrong. We

ought to check that later on. It changed. Some of the old cases go back to the 1920s. Herminghaus against Southern Cal Edison was a case that had to do with an electric utility wanting a different flow regime than the people who had the prior rights. And the California Supreme Court held prior rights prevailed. And that led to a state constitutional change that has been ambiguous ever since, but on which Joslin, for example, was partially built—

Lage: Oh, I see.

08-00:37:57

Graff: —on whether there was more flexibility in the constitution than one might think there was. And it also gets into riparian versus appropriative rights. There are scholars who are much more qualified to discuss this than I am, but—

Lage: But you had to know it to file these cases and argue them [laughs].

08-00:38:15

Graff: Yeah, right. But it's dimming in my memory. Tony Rossmann, who's another good friend who teaches water law now at Boalt, as a lecturer, is someone who will cite you chapter and verse. And I think since Joe Sax left and Sho Sato left, Boalt does not have a real water law practitioner.

Lage: That seems kind of a glaring—

08-00:38:45

Graff: It seems weird. It is a glaring problem, and they know that. But somehow, they've never found the right person. I think they just pulled Holly Doremus down from Davis. And she's done a fair amount of thinking and writing on water. And I think they want her to eventually get involved in the water thing. And—I always want to call him Dick Frank—Richard Frank, who heads an environmental institute at Cal and was a deputy attorney general, state attorney general, is another guy who knows a lot about water, is one of the members of the current—well, it isn't quite current—Delta Vision commission. Their sort of legal guru. So there are people around who know these issues, Brian Gray at Hastings, Buzz [Barton H.] Thompson at Stanford, and others.

Lage: Are these people that you would enter into discussion with as you were—

08-00:39:47

Graff: Oh, of course, yeah. Brian Gray, when he was just a youngster, did pro bono work for us on the wild and scenic rivers litigation. We haven't talked about wild and scenic rivers. Maybe we'll get to that later. But that was litigation filed against our interest, when James Watt came into office. Well, when Cecil Andrus issued the decision on January 19 or 20, 1981, his last day in office, to federalize wild and scenic river protection for the North Coast rivers and the lower American, that was challenged by both water and timber interests. And

then James Watt came into power the next day, and he pulled the federal government out of the litigation.

Lage: I think you told a little bit about that. And then the state dropped out—

08-00:40:54

Graff: [over Lage] Right. And the state, years later, when Deukmejian became governor, dropped out. And so we were left handling the case. And Patti Wells, who was one of the first women to work with us in a professional capacity, and Brian Gray were our lawyers. And we won. And by then, I wasn't doing litigation anymore. Just one other little story about that. The reason that went to the federal government— Well, no. When we get to the peripheral canal, I'll talk about this some more.

Lage: Okay. Okay, we'll hold on that.

08-00:41:31

Graff: But a lot of these personalities intersect.

Lage: And the cases intersect. Someone like Bruce Dodge, would you have hired him as a consult, or was he pro bono or—

08-00:41:43

Graff: He was pro bono.

Lage: Ah. Was that difficult to arrange? You arrange it with his firm, or how is it done?

08-00:41:51

Graff: Well, he had to arrange it with his firm. We just didn't have money, so that was kind of part of the ethos of the time. A lot of the firms still do a lot of pro bono work. Heller Ehrman until very recently, when it collapsed, did major work for us in CVPIA [Central Valley Project Improvement Act] litigation. Larry Hobel, who's a near neighbor here, was the principal, although he didn't do a lot of the legal work; but he, in the early days of the litigation, worked through a lot of the theories.

Lage: So that's really important, to be able to draw on these—

08-00:42:30

Graff: Oh, yeah. Oh, yeah. Well, modern litigation— It's interesting. I had a conversation just a few days about with David Mastbaum, who worked for us for a period of about ten years, I think, both here and in Colorado. Ended up living in Colorado. Is a big mountain climber and long distance runner, among other things. Just what Boulder is famous for. But he's made his life, essentially, as a solo practitioner who does a lot of the litigation, particularly in the areas of intellectual property and copyright and trademarks and so on.

Lage: Not necessarily in environmental law.

08-00:43:17

Graff: Not since— I mean, he’s also done some environmental stuff since he left EDF, but he— He’s up against big firms, usually, and somehow manages to make it work. And because of his connections in the water community and in the sort of extreme sports community—skiing and long distance running and that sort of thing—he’s had a diverse and interesting clientele. He just told me today, which I didn’t know, that Ben Harding, who I’ve known as a water engineer—he’s involved indirectly, mostly with our Boulder office, but a little bit with cases that we did—was married to one of the Udalls.

Lage: [laughs] Oh, really?

08-00:44:05

Graff: Sister of the new senator from Colorado. So it is a small world. And one of the Udall girls was also at EDF, over in our international program in DC for a while, working with and for a guy named Bruce Rich, who is one of my favorite characters in the environmental world. He and Zach were the outliers in our sort of somewhat buttoned down world. David Roe is the epitome of the buttoned down guy [Lage laughs] and I—

Lage: I love the way you’ve characterized the two of them.

08-00:44:52

Graff: Mastbaum and Roe?

Lage: No, Willey.

08-00:45:00

Graff: Well, David tells the story of his interview. Did you notice that?

Lage: About—? He did, yeah.

08-00:45:05

Graff: And he was asked by Zach what his sign was.

Lage: [laughs] Right. Now, is that real?

08-00:45:12

Graff: Who knows?

Lage: Because somewhere else, I read another reason why David Roe was hired, that didn’t bring up astrology.

08-00:45:22

Graff: No. Well, it was not a major consideration in my recommendation, either. But the other place where astrology comes in is the first time Sharona came to California; she’d never been. And I was already very serious about her. We had an intercontinental relationship. I took her to see Zach. And his then wife,

Karen Rogers, when we entered their house, was throwing tarot cards. [they laugh]

Lage: Sharona had a lot to learn about California. [laughs]

08-00:46:09

Graff: Had a lot to learn about California.

Lage: At that time.

08-00:46:13

Graff: Right, at that time. And Jerry Udinsky was having his future read, or whatever one does with tarot cards. And I think it was somewhat eye opening for this—

Lage: Did Sharona ever have second thoughts about moving here? You've told two or three stories about your encounter with California new age.

08-00:46:34

Graff: Right. Yeah, right. I don't think so. Maybe you should ask her, but I don't think so. That was Thanksgiving time of '78. And she actually didn't move out until the end of '79. But the spring of '79, I was in Cambridge, so we were both on the East Coast. And she was writing her thesis, so she had time.

Lage: And reading up on astrology. [they laugh]

08-00:47:05

Graff: Astrology. Nancy Reagan, after all, was into astrology, so that makes it respectable. Yeah. I've never had the—I don't know if guts is the right word—to ask Zach even what his reaction to that description in David Roe's book was. I'm sure the story is true, but I don't know whether— The more likely explanation is that Zach was jerking David's chain, so to speak.

Lage: Is Zach still kind of an alternative culture fellow?

08-00:47:51

Graff: Oh, absolutely. Absolutely. Just to look at him is to figure that out. But he's also a serious person. And one of the things that's— *Acorn Days* [*The Environmental Defense Fund and How it Grew*, by Marion Lane Rogers (1990)] must have a description of Zach somewhere.

Lage: I think it does.

08-00:48:09

Graff: Yeah. I'm sure he didn't trade astrology jokes with Marion Rogers. [they laugh] Who's a terrific lady, by the way. And I strongly recommend that book for anyone who's researching EDF. I learned, by the way, which I may have misinformed you about, that Stony Brook does not have any oral histories.

Lage: Oh. You did keep referring to these oral histories. So have they not been done at this time?

08-00:48:33

Graff: No. I asked Meredith Bouchard [archivist at Stony Brook] and she said it's on their list. But I think they're in the same position as you are, that they need someone to fund the work.

Lage: Right. That would be a good thing for EDF to develop, some funding for that.

08-00:48:48

Graff: Well, I think we are involved in the archive. But Charlie [Wurster] and Art [Cooley] are not that young anymore. So if you're going to get the founders—

Lage: They need to do it.

08-00:49:03

Graff: They do need to do it soon.

Lage: Yeah. It's important. Especially when you have that wonderful collection. All the environmental organizations haven't taken the care to put their records somewhere.

08-00:49:14

Graff: Well, maybe when we're done or closer to done, I'll send a note to Fred Krupp and tell him, get off the dime.

Lage: Right. They could raise money for that.

08-00:49:28

Graff: Maybe I'll do it today, since it came up.

Lage: We started out on this by talking about how you moved out of litigation.

08-00:49:37

Graff: Right. So I think it was a dual— there're probably several strands for that. One is that I discovered—probably a lot of other people have discovered this, also—that it's very hard to both be a litigator and a more general policy advocate, because litigation has its own deadlines and rhythms. And when you're called to court, you can't say, well, I was going to have a meeting with the assistant secretary of the interior that day. Maybe you can, and some people do it, but that's a hard combination. Secondly, EDF learned from the early NEPA and CEQA litigation that they only took you so far. You could maybe slow down a project, force a new report to be written, but you couldn't stop the project without other forms of advocacy in the legislature and the Congress—

Lage: And the press.

08-00:50:56

Graff: —and directly in the agencies—and the press and so on. We want to talk about the press. And I have gotten pretty good at that stuff.

Lage: Do remember any discussion where people were saying, “Hey, this isn’t working. The ‘sue the bastards’ isn’t working.”

08-00:51:14

Graff: Yes. Yes. And they evolved over time. If the package from Stony Brook [archives of EDF] had come, you might even be able to trace some of that in board minutes and the like. So it wasn’t just Tom Graff. On the other hand, Jim Tripp, who came to EDF two years after I did and is still there, in his late sixties, general counsel in the New York office, he still litigates. But he does it with other people, and he doesn’t take full responsibility for the litigation. He’s a tremendously—what’s the right word?—multifaceted, broad gauged person. One of his huge campaigns over several decades has been the problems of the lower Mississippi, the dead zone in the Gulf of Mexico, flood protection for New Orleans. He’s on a state commission in Louisiana on those issues.

Lage: So he’s issue oriented, not just litigation.

08-00:52:24

Graff: Oh, yeah. But—

Lage: But using litigation to advance those issues.

08-00:52:27

Graff: Using litigation, right. He does stuff in Long Island having to do with the Pine Barrens out there and keeping some open space. Same in New Jersey, with the Pine Barrens of New Jersey. He’s also done a lot of transportation work. He’s been very diverse. One of the critiques of him, which I think is unfair, is that he spreads himself too thin. I think one of the things I decided, probably the biggest single decision I made, when I handed over the electricity case to David Roe, was I was going to specialize, at least for much of what I did.

Lage: In water.

08-00:53:06

Graff: And that’s been true, in water. I ended up doing a fair amount in transportation. And you never stick to your guns entirely, but—

Lage: No. And also things seem to be related to one another.

08-00:53:16

Graff: Right. They come up. Particularly when you’re involved with the legislature and the issue of bonds, for example, cuts across issue areas. The issue of trades, cap and trade became a big issue in California. And I became somewhat of a player, along with Jim Marston from our Texas office, in AB-

32, which was the first big climate legislation to pass in the United States, in 2002.

Lage: Okay. Now, let's not go there yet.

08-00:53:50

Graff: Oh, okay.

Lage: [laughs] That's going to take us—

08-00:53:52

Graff: But that's another case—case is an interesting word—where it wasn't litigation, although litigation was spawned by it. The auto makers sued to prevent California from implementing the regulations.

Lage: But it was policy.

08-00:54:17

Graff: It was policy at the time.

Lage: So at some point, you decided—

08-00:54:20

Graff: I'm going to be a policy guy.

Lage: Do more policy and concentrate on water.

08-00:54:23

Graff: Right, right. And I don't regret either of those decisions. I love doing those. I love the policy stuff. I like the interaction with people. Litigation, obviously, you go to court, but a lot of it is sitting there writing briefs.

Carl McGowan's one of my heroes, who's the judge that I clerked for, and he was, by that time in his life, perfectly comfortable sitting at his desk and composing decisions. I know from other friends who've gone into the courts—Marsha Berzon— She's not really a friend, but I know the family; their son went to CPS [College Preparatory School]. Willie Fletcher, who's a friend of Bill Clinton's, a friend of David Roe's. They're real scholars. Oh, I should tell you one story. This is one I told when the chair was dedicated. When I finally was free of draft obligations— Have I told you my way of getting out of the draft?

Lage: Right. [laughs] You did.

08-00:55:41

Graff: I didn't know what I wanted to do. And one of the possibilities, as it turned out, was an inquiry by Harvard Law School. Was I willing to spend four years, was their guess, learning Japanese and becoming a Japanese law scholar at Harvard Law School?

Lage: Wow, that's kind of an out of the blue—

08-00:56:14

Graff: Out of the blue. And the reason was they had a scholar there at the law school named Jerome Cohen, who was a Chinese law scholar. And he had built up a pretty impressive program in Chinese law. But they had no one in Japanese law and they didn't know how to get one. Cohen had spent time in China and really knew Chinese culture, as well. And his wife was part of the— They have a Chinese art collection at Harvard. So they fit the campus really well. But they were kind of grasping for the Japanese law scholar.

Lage: Did you think about that for very long?

08-00:56:55

Graff: I thought about it, but A, I'm not that facile with languages, generally; and B, I kind of intuited that a life of scholarship was not going to be what I should do. They also interviewed me for their legal history program. But ultimately, my good friend and law school classmate, Morrie [Morton] Horwitz, beat me to it and became their principal legal historian there. He wrote one of the seminal books on American legal history in the early days.

Lage: But it sounds like you realized you wanted to be out in the world.

08-00:57:38

Graff: Yeah. Right. And I made the right choices. And another choice I made, which relates somewhat to this. And again, I don't know whether I would've actually gotten the job, but there had been four EDF executive directors in my tenure. Rod Cameron, when I joined; Arlie Schardt; Janet Brown; and then when she left in late 1983, there was an interregnum. A guy named Bill Brown, unrelated, was acting director, and they were doing a nationwide search for a new director. And probably—this is my view, and it's subjective—of all the staff people at EDF at that time, I was the most likely to be promoted from within.

Lage: Because of the breadth of your interest in things, or—

08-00:58:35

Graff: Well, it's just personalities and interests. We're going to talk funding today. I was at least somewhat interested in funding, or did some funding. Anyway, Sharona and I both debated it.

Lage: Debated even applying.

08-00:58:53

Graff: Even applying, and decided not to. It was complicated. Her parents were in New York, and that was both a plus and a minus. And we had little kids. Ben was born in '82 and Rebecca in '84. So during part of that time, Sharona was pregnant. Plus we had a child who was still in her teens, back here.

Lage: Samantha.

08-00:59:25

Graff: Samantha, right. So I didn't apply. But it's—

Lage: Another place where your direction would have switched.

08-00:59:33

Graff: Right. To be brutally honest about myself and about the organization, Fred's better at the job than I would've been. On the other hand, some of the early flavor of EDF, sort of the culture, has dissipated and been lost.

Lage: Do you think you would've been able to maintain it? And what facet are you talking about?

08-01:00:08

Graff: I don't know, I was debating with someone the other day, the meaning of the word *hamish*. It's a Yiddish word. And I think we were more *hamish* in those days.

Lage: And what is the meaning of the word?

08-01:00:20

Graff: Well, it's hard to define. It's a Yiddish word. It's just "people matter." People like you because you're one of the people, rather than exalted.

Lage: Less hierarchical?

08-01:00:50

Graff: Right, less hierarchical.

Lage: Or less organizational?

08-01:00:55

Graff: Organizational. I mentioned this in my exit interview that David Abel did, that I don't think it's possible in a large organization to maintain as much of that quality as in a smaller organization. For about a twenty-year period, nobody ever left the California office.

Lage: Oh, really? You mean they didn't—

08-01:01:23

Graff: I mean they came and they stayed. Roughly, the '75 to '95 period. So that was already ten years into Fred's tenure. Fred was in New York. And one of the advantages for us in California in the early days was that New York had plenty of big problems of its own, particularly in the fundraising area. Arlie and Janet were not great fundraisers. So we weren't for sure that the next paycheck was really going to come. Although it always did. And there were never really explicit layoffs in my years at the organization, all of these broad

scale layoffs that were based on money. So that's kind of a long way around talking about the evolution from law to policy.

Lage: Right. And if you'd gone in that direction, I don't know, you might not have been so much in policy, but you'd have been in fundraising and administrating and—

08-01:02:32

Graff: Right, right. Well, you can't— Fred Krupp has stayed very involved in the climate issue, which is now the premiere issue for the environment, but that's unusual. Well, maybe it's unusual. Carl Pope has done it; probably, Mike McCloskey did some of that, I don't know. [both Sierra Club executive directors]

Lage: Yeah, they did.

08-01:03:05

Graff: But anyway, I think one of the reasons, although I think it's probably a lesser one— Well, maybe not. Maybe I really thought I wanted to be a policy person more than an administrator. And it's interesting because Sharona, when presented with the same question, or a similar question, did move part-time into administration at College Prep.

Lage: From teaching into admin—

08-01:03:37

Graff: She became admissions director and college counselor, and eventually, assistant head. But interestingly, she's always, except when the kids— Well, she took some time off when the kids were very little. She's always kept a class. Teaching is her real passion. And partly, she did the administration originally because it was paid a little better; partly, it was kind of a status thing, possibly, I don't know. Anyway, she's stayed with it, feels obligated to it. She's now, what, almost fifty-seven. She'll stay there another at least three years and maybe more, depending what occurs in other aspects of her life. But those are big life decisions. And the only other time I thought of a different professional course in any serious way was when Clinton was elected and there were two Democratic senators also elected at the same time. And I thought, well, maybe I should throw my hat in the ring for a federal judgeship. The other consideration was DC. But there were two reasons not to do that. One, by then we were ensconced in California.

Lage: When you say DC, you mean looking for a position with—

08-01:05:06

Graff: Looking within the Clinton administration.

Lage: Within the Clinton—

08-01:05:10

Graff: And the other was that David Roe clearly had the in, because he and Clinton overlapped as Rhodes Scholars.

Lage: Oh, that's right.

08-01:05:17

Graff: And so I said, "David, you go for it."

Lage: Did he go?

08-01:05:21

Graff: Yes and no. He had a particular job in mind. And as it turned out—and I don't know how formal this ever was but—Clinton basically turned over the environment to Gore. And there must've been some understanding—there probably wasn't anything in writing—that Gore could have his choices for positions. The job that David really wanted was the principal environmental job in OMB, in the Office of Management and Budget, which oversaw all the environmental activities of the federal government. And basically, a protégé of Gore's got the job. So it ended up that nobody from California went back. In the early days, someone who did go back in the early days of the Carter administration was Kathy Fletcher, Willie's sister, who was in the White House.

Lage: And she was an EDF person.

08-01:06:34

Graff: Right. Great lady. And we got involved with her. And we can do this later, when we do water. Carter had his hit list, his water hit list, and she was very much involved in that. Anyway, that's the policy story. And a piece of the policy story—I know you want to talk about that—is getting to know the reporters. This is going to change for the new generation, because of the diminishment of importance, potentially, of print media. But I made a lot of acquaintances, and in some cases friends, with print reporters.

Lage: Shall we talk about that now?

08-01:07:28

Graff: You want to? How are we doing on time?

Lage: We haven't done electricity, [laughs] which seems to get put off every time. We've been going for about an hour now. It's eleven.

08-01:07:37

Graff: Well, let's take a little break.

Lage: Yeah, that sounds good.

08-01:07:41

Graff: Okay. [audio file stops and re-starts]

Lage: Okay, now we're back on, after a break. And we're thinking about press relations.

08-01:07:47

Graff: Right. I've been reading a lot of biographies recently, and sort of thinking about the oral history in that context. It's pretty much impossible, I think, not to brag about oneself when one's doing one of these [oral histories]. So— [they laugh]

Lage: That's quite all right.

08-01:08:14

Graff: But I do think that—I have some external confirmation of this—I think I've been somewhat exceptional in having good press relations with people, particularly in the major newspapers, both state newspapers and national.

Lage: Well, how did this come about? Let's think about how—

08-01:08:38

Graff: Well, it's a good question. One kind of directive that has stuck in my mind for what is now, well, forty years; so it was pre-EDF— When I worked for Mayor Lindsay in the DC office of the mayor of New York, it was a very small office, had three people. I was the number two professional. There was one administrative assistant. My boss, Peter Tufo, who later became prominent in various ways in New York, said essentially, I have one instruction for you that you need to follow without fail; and that is, never talk to the press. [they laugh]

Lage: So this is not where you got your—

08-01:09:41

Graff: Right. So when I first came to EDF, I was totally green in all kinds of ways, not including the ecological way. It just sort of evolved. My first few years, when we were doing PUC cases and East Bay MUD and New Melones and Auburn and Coastside, I'm sure they were written about, but I don't think it much occurred to us to seek publicity.

Lage: If you're just doing litigation, you're not necessarily thinking about publicity.

08-01:10:22

Graff: Right, right.

Lage: But you don't recall when you realized, well, this is maybe—

08-01:10:27

Graff: Jerry Meral had a friend named David Kay, who got involved with us part-time, doing media stuff. And when he was doing Prop 17 with Rob Caughlan and David {Oak?}—obviously, that was a statewide campaign—they got involved in public relations. And I started to get to know who the reporters were, I think. That was '74. Dale Champion of the [San Francisco] *Chronicle*, was— Harold Gilliam, others like that, I got to know probably as early as that.

Lage: Well, they had a real interest in environmental issues.

08-01:11:14

Graff: In environmental, right. And Harold ended up writing some significant pieces later on. Jack Burby was a former press secretary of Pat Brown's. He eventually went to Washington for a while. Came back to Los Angeles and became the head of their editorial coverage on environmental issues.

Lage: *L.A. Times?*

08-01:11:46

Graff: *L.A. Times*. I became friendly with Jack—and he wrote some key editorials over the years—and then with kind of reporters on the news pages. There were a lot of them. Phil Shabecoff of the *New York Times*, someone I got to know, he was very interested in California. One of the reasons, because his daughter went to Stanford. And so he used to look for excuses to come to California.

Lage: [laughs] Because really, the *New York Times* wasn't known for being that interested in California then.

08-01:12:20

Graff: That's right. That's right. But he wrote a lot of the big stories on the peripheral canal later on. Or at least two or three of them.

Lage: So did you have a way of interesting them? The peripheral canal wasn't necessarily an issue that you'd expect—

08-01:12:35

Graff: *The New York Times?*

Lage: Yeah.

08-01:12:36

Graff: Well, I think part of it was he came out here, I think partly, because of his daughter, who later became the head of public interest law at Harvard. Well, I've never met her, I don't know her; I just know that she's done that. There were only a handful of *New York Times* and *Washington Post* people that I got interested in, or helped to get interested, in California water. One of them—

Lage: Now, would you write things up for them, or—

08-01:13:19

Graff:

It might be a letter. It was pre-email. But usually it was phone calls, to start off the conversation. The best, the two sort of most seminal pieces that I had a hand in, I think, aside from op-eds and that kind of thing, were Lou Cannon, who was Ronald Reagan's biographer, among others, but I think he's kind of known as the most notable. Cannon wrote what I thought was the definitive piece on CVPIA [Central Valley Project Improvement Act, 1992]. And for the life of me, I don't know where it actually was published. But I have it. It was the Washington Post Writers Group, so that's an East Coast writer, but he obviously had California ties. I got to be friendly with him, and he was a believer in water markets, which were a key component of CVPIA. And then the— [background noise, pause in recording]

08-01:14:41

Graff:

I was talking about Jack Burby. Well, Jack wrote a lot of the key pieces, about the peripheral canal and later on other things having to do with California water, from the *L.A. Times* perspective. Now, the [San Francisco] *Chronicle* was crucial on the peripheral canal. George Miller and I and Warren Hinkle had lunch not too long ago, two years ago, maybe.

Lage:

George Miller the congressman?

08-01:15:12

Graff:

No, George Miller the—

Lage:

Oh, George Miller the—

08-01:15:14

Graff:

Yeah. [Lage laughs] And George, I think, is involved with you, with the oral history of Warren Hinkle, as well. Are you aware of that?

Lage:

Yes, yes.

08-01:15:22

Graff:

Anyway, Warren, who was with the *Chronicle* in those days, talked about how the paper just basically made a policy decision to defeat the peripheral canal, which I didn't know.

Lage:

And so you weren't involved in that.

08-01:15:36

Graff:

Well, I wasn't involved. I was certainly involved with a lot of their stories that came out.

Lage:

But that would be sort of a key endorsement. Maybe not so much now, but then, they carried quite a bit of weight.

08-01:15:49

Graff: Oh, absolutely. And the fact that the Bay Area votes were so stacked. 96, 97 percent, in some of the Bay Area counties. I think Alameda was only 94.

Lage: [chuckles] That's a huge—

08-01:16:03

Graff: And the lowest was Santa Clara, at 89, even though the water district down there endorsed the canal. So the print media and of course, many of the TV stations and radio, as well—

Lage: Did you have as much to do with TV and radio?

08-01:16:25

Graff: Much less. I was on TV a fair amount, but it's much more random. In the old days, there would be channels in Sacramento on a regular basis. And that's no longer true.

Lage: The coverage of Sacramento has really dropped off.

08-01:16:45

Graff: Right.

Lage: What about the *Sacramento Bee*? Did you have any—

08-01:16:47

Graff: The *Sacramento Bee*, I had great relations with Peter Schrag, who was the editorial page editor, and with Rhea Wilson, in the early days. And they were among the first to really embrace water marketing. I have—and I'll dig these out when we talk about water in a serious way—they endorsed the Stavins study and called attention to it. Metropolitan [Water District, MWD] originally kind of tried to brush it off, and in the face of that kind of public attention, they eventually came around. And Tim Quinn has told me—and Carl Boronkay somewhat ratified this—that it was partially the fact that they couldn't avoid it that Carl decided he had to take it seriously. Hired Tim Quinn, who was an economist. And they started to—. And eventually, by 1989, they cut their first deal with Imperial.

Lage: Yeah. Which you're talking about later. [laughs] What about—I'm thinking about *Sacramento Bee*—Bill Kahrl has written on water so much, but—

08-01:18:13

Graff: Yeah. Bill became an opponent. Bill wrote what I think is the—

Lage: A proponent or *opponent* of water rights?

08-01:18:20

Graff: Opponent. Well, and disparaged EDF. He's an odd duck. We had a personal connection with Bill. He was from Cleveland, where he grew up. And I'm not

sure I'm going to get this right, but I think Terry Young knew him as a kid, or in college or something like that. Anyway, he wrote the most favorable and kind of interesting book review of David's book, *Dynamos and Virgins*.

Lage: Oh, he did.

08-01:19:02

Graff: And in the early days, when he first was on the editorial board, he embraced a lot of what EDF was doing. But somewhere along the line, he got it in his head that we were—I don't know if selling out is the right word, but were too cozy with MWD. Which I thought was ironic, particularly later on, when he went to work for industry.

Lage: [chuckles] Oh. I didn't realize that.

08-01:19:37

Graff: He's a for-hire sort of public relations consultant now.

Lage: He did the water atlas [*California Water Atlas*, 1979], didn't he, for the Jerry Brown administration?

08-01:19:54

Graff: That's right. That's right. Under Bill Press's auspices. You know who Bill Press is, right?

Lage: Mm-hm.

08-01:20:02

Graff: Yeah. It was a great piece, great work. Jerry Meral tells the story that the only living human who is cited in the water atlas is Peter Behr, who was doing wild rivers at that point.

Lage: Yeah, yeah. And Bill Kahrl had been an intern for him [on the Save Our Seashore campaign]. So Behr was the only person cited in the whole water atlas?

08-01:20:33

Graff: Right, right. Bill Press was also an intern, with Behr. Anyway, yeah, I don't remember the progression of Bill's from co-conspirator to critic.

Lage: It would be interesting to know how he sees it.

08-01:20:58

Graff: He has an oral history, doesn't he?

Lage: Bill Kahrl? It's just a very little, brief interview about Point Reyes and the work he did with Peter Behr.

08-01:21:10

Graff: I finally got disgusted with him and stopped calling him. But he outright opposed some of our water marketing concepts. And it took a while later, then, when Tom Philp came back in—

Lage: To the *Bee*.

08-01:21:28

Graff: —to the *Bee*. And he ended up with a Pulitzer, related to our Hetch-Hetchy work, to get them back on board. And then Stuart Leavenworth followed him. And Stuart's a great guy.

Lage: I'm wondering if it was kind of a sustained effort to bring major papers around.

08-01:21:48

Graff: Oh, absolutely. Absolutely.

Lage: It's not just the random phone call.

08-01:21:51

Graff: No, no. No, no, no, no. Whenever I'd go to DC, I look up particularly the *Bee* reporters who covered water, but also the *Chronicle* and the *Times*. Maybe the *Union*. We would have open briefings, and they would come and you'd get to know them a little bit, exchange cards.

Lage: In DC?

08-01:22:15

Graff: In DC. Occasionally, we'd have them in the local *Bee* offices as well. Although I think we didn't in the old days. That's part of the sort of modern thing. You have conference calls and you have to have call-in numbers to get into them and that kind of thing.

So back to my choices in life—I'm not sure how readily I would've glommed onto the new technology and the new practices and all that. One of EDF's big fundraising practices now is major donor, exclusive-only access to our top policy people on specific issues, where they call in and they get a briefing, and then they can ask questions. And they're usually on topical issues. Like sometimes it'll be consequences of the most recent election. More often, it'll be what's the status of the climate bill, or the attack on endangered species or that kind of thing.

Lage: So this is sort of a—

08-01:23:38

Graff: A way of keeping—

Lage: —payoff? [laughs]

08-01:23:40

Graff: Right.

Lage: Payoff isn't the right word.

08-01:23:41

Graff: A way to keep donors interested and giving them some exclusive access. I think that's common practice among politicians and governments. Schwarzenegger has— I'm on a couple of his lists. You can actually choose to be on more of them, but—

Lage: So that would give you—

08-01:24:00

Graff: I get to call him when he's doing a briefing on water or whatever.

Lage: I see. And it'll be a conference call, with a—

08-01:24:07

Graff: Right. And it's listen only for the first twenty minutes, and then questions.

Lage: So would the EDF donors talk to the top policy people in EDF about what their current work is?

08-01:24:23

Graff: Right, right. And that used to be much more informal. If you had a donor, a Pam Lloyd, for example, or George Miller, a Jim Compton, you would keep them informed.

Lage: Just by way of good relations.

08-01:24:42

Graff: Right.

Lage: Oh, that's so interesting. I'm behind the times, because I hadn't heard about these exclusive relationships. [laughs]

08-01:24:49

Graff: Right. Well, for masses, the Obama campaign just— I'd get three emails a day from them.

Lage: Still.

08-01:25:05

Graff: Well, it's cut back quite a bit. And I was not even a donor, as it turned out. That's a funny story, too, but— And I should point out here that EDF is a 501(c)(3). So we had to be extraordinarily careful, as an organization, about endorsing politicians. That was a no-no, couldn't do it. Well, the organization couldn't do it. Individuals could do it, but they had to be extremely careful about pointing out it was themselves and not the organization.

Lage: Did you have to be careful about the amount of time you spent lobbying?

08-01:25:53

Graff: Yes.

Lage: Did you have to keep records?

08-01:25:56

Graff: Yes. We were paid on a two-week basis. We would have to write down what percentage of our time in those two weeks was lobbying. And it was also complicated because there were two kinds of legislation, in California, particularly. There was Sacramento, and there were initiatives and referenda.

Lage: Oh, yes.

08-01:26:26

Graff: So in the old days—I can't remember, but we were careful. I'm not sure if we were careful enough about how much time we spent in direct lobbying on initiatives and referenda and legislation.

Lage: Because that counted, also.

08-01:26:45

Graff: That counted, right.

Lage: Not just in Sacramento.

08-01:26:47

Graff: Right, on, say, the peripheral canal campaign. But it helped, from my point of view, that we were not in Sacramento, because I never did office-to-office lobbying, where a major bill was up and you would go visit 120 legislators. I never did that.

Lage: [over Graff] Oh, you didn't. Not you or the organization?

08-01:27:17

Graff: No. We, in fact, have only had a Sacramento office this decade. And EDF is pretty careful, I think, even now—I mean especially now—to keep records. There are complicated rules. If you're asked to testify, it doesn't count. If you ask to testify, it does count.

Lage: I see. Because if you're asked to testify, you're like an expert witness; it's not lobbying.

08-01:27:46

Graff: Right, right, right. When I go back to Washington to testify, I would get an invitation, so it wouldn't count.

Lage: But would you often—

08-01:27:58

Graff: And therefore, the travel didn't count either.

Lage: Yeah. Would you also hook up with non-501(c)(3) organizations, like Friends of the River?

08-01:28:08

Graff: Yeah. Sure. Well, Friends of the River, Sierra Club. And that was crucial in the peripheral canal campaign.

Lage: Which we're going to talk about later.

08-01:28:18

Graff: Right, right. But we're talking about media. Yeah, it's interesting. Media slipped to the back of my CVPIA interview and it just didn't come up until— And then I said, "Oh, we'd better talk about media." And we did. I became friendly with a limited number of fundraising people at foundations. Jane Rogers, at the San Francisco Foundation, was and is a friend.

Lage: The wife of Michael Fischer.

08-01:28:53

Graff: Of Mike Fischer. She was also a good friend of Jean Auer's. San Francisco was one of the first institutional funders to fund our water work. The Ford Foundation, Rockefellers, and others funded EDF more broadly. And Zach, of course, had a very good Ford relationship, even before he came to EDF.

Lage: So how did you get the relationship with Jane Rogers and the San Francisco Foundation?

08-01:29:24

Graff: I think they must've made a policy decision that water was important. Obviously, with the peripheral canal a big deal, that was a Bay Area priority. And we had one of the early and big programs, which Jane liked and Jean liked. And Jean was an advisor to Jane.

Lage: Now, Jean—

08-01:29:51

Graff: Auer. Jean Auer, Jean. Jane Rogers, Jean Auer.

Lage: Right. [chuckles]

08-01:30:01

Graff: And unfortunately for the current EDF water program, the San Francisco Foundation has drifted away from funding the sort of ecologically oriented and policy-oriented work to funding environmental justice work. So their big funding now, even in water, is the Environmental Justice Coalition for Water,

which is to our left, doesn't like water marketing. So be it. I think George Miller's not happy with that. He has a designated fund at the San Francisco—

Lage: But he can designate it where he wants.

08-01:30:46

Graff: Right. He has other reasons for— He's done a lot of water funding over the years. He started off as a funder of our general water board, California water. And then Hetch Hetchy became a real passion and he was a major funder of that, as well.

Lage: Has the San Francisco Foundation been interested in the Hetch Hetchy?

08-01:31:10

Graff: No. We took a run at them, but they're too establishment, I think. But they obviously approve George's— They have to approve his designated funding, and they did that.

Lage: What have been other important foundations for—

08-01:31:25

Graff: Well, Compton Foundation, in the early years.

Lage: Now, what's the Compton Foundation? Is it located here in the Bay Area?

08-01:31:34

Graff: I don't know the answer to that. Currently, Randall Compton, Jim's father— Jim died recently, in his seventies, so he would've— He was an early funder of both peace work and environmental work. And Jim, I think he had a son and a daughter, who kept both of those programs going. And he also was a big lover of rivers, a rafter and a kayaker. And so the river work was a personal passion.

Lage: So did you approach him because you knew of his interest in rivers?

08-01:32:26

Graff: We approached him, right. And we took river trips with him and the like. And he also had done a couple of other— Well, his sister, who was instrumental in the foundation also, was a little less interested. But we took her down the Stanislaus and the Tuolumne. And he married a Randolph. No, how did this work? He married a Danforth. He was James Randolph Compton. So there were various prominent and wealthy families. And the Danforth Foundation in Missouri became an environmental funder of sorts. And there was a Senator Danforth. But I think we didn't get significant money from them. But there was a tradition in the family, of giving. And then other San Francisco-based foundations, the Columbia Foundation and the Gerbode Foundation, both were funders of ours.

Lage: On specific topics?

08-01:33:35

Graff: On water stuff. And eventually, they tired of water funding. That's one of the problems with foundations, is that there're fads, basically. And they get excited about a subject and then the topic doesn't go away, but they go away.

Lage: Yeah, right. They're on to something new.

08-01:33:56

Graff: And even Ford was like that, and Rockefeller. We never really— Well, {inaudible} and Tom Huntington both were significant helpers in keeping the foundations happy.

Lage: On your staff.

08-01:34:24

Graff: In California. But then once the orientation of the organization shifted, in the early to mid-nineties and—

Lage: Shifted to?

08-01:34:40

Graff: Well, I'm going to get to that. To large individual donors.

Lage: Oh, okay.

08-01:34:49

Graff: The people we hired to do fundraising in California also shifted. And shifted in two ways. One, substantively, to other topics; and two, and probably more importantly, to serving the national financial interests, development interests, rather than California's.

Lage: Oh. So they were supporting the national development office.

08-01:35:19

Graff: National. There were, arguably, two reasons for that. One is that's what national wanted. But I think they would argue, and I think with some merit, that a lot of the money was in California and a lot of the money was interested in national issues. So over time, California water became secondary in Fred's interest: A, because it was California, and B, because it was water. As you had pointed out in an earlier question, if you're a New Yorker or a Washingtonian, this is not one of your top interests.

Lage: They don't see what we're living with here. [laughs]

08-01:36:18

Graff: Right, right.

Lage: But the Boulder office must've been interested in water.

08-01:36:22

Graff: Well, yeah. And they had their own funders. General Services Foundation.

Lage: Now, what is the General— I saw that listed in the Stony Brook finding aid.

08-01:36:29

Graff: They're a big Colorado-based funder. They funded a little bit of our stuff, but mainly Colorado office. And Bob Musser, who's a family member—they sort of combined Colorado and Minneapolis—Bob was a big fan of Dan Luecke's, who was our Colorado office director. A really good guy, a good friend. And eventually, another big funder of Dan Luecke's was Michael Fischer. One of the things Michael did, which was probably correct as a matter of national environmental policy, was when he started off, when he was hired at Hewlett, he decided to make Hewlett more a Western funder and less a California funder. I don't know whether he was influenced by the fact that Jane was there and was doing California, but—

Lage: It might've been the whole foundation shifting, too, I think.

08-01:37:42

Graff: Well, but it was at his urging. He became a big fan of Dan's and they became good friends. And then, in one of less pleasant episodes in my EDF life, Hal Harvey, Mike's successor as head of environmental funding at Hewlett, and Fred Krupp had a meeting in New York, from which Dan was excluded. And—I can't remember the reason—I couldn't go, and another colleague of ours went, who was not—well, I think was kind of out of her element in this meeting. And not long thereafter, Hewlett stopped funding us and Dan Luecke left EDF. Dan Luecke and Mike Fischer were very good friends. And not long after Mike Fischer left Hewlett— I don't know what Mike said about that, if anything, in his oral history.

Lage: He didn't. He was still at Hewlett when we were talking.

08-01:39:00

Graff: Is that right? He just covered the Sierra Club?

Lage: And the Coastal Commission.

08-01:39:06

Graff: Anyway, it's clear that Hal and Mike were not made for each other. And Fred Krupp and Dan Luecke were not made for each other.

Lage: And so did Hewlett start funding the national interests of EDF?

08-01:39:25

Graff: Yes. Well, Hal Harvey, particularly, started funding energy and climate work.

Lage: All of which is important, I'm sure.

08-01:39:33

Graff: Right, right. Yeah, no, there's plenty of other reasons for things to happen than just personalities. [they laugh]

Lage: Right. Interesting.

08-01:39:41

Graff: But you asked about funding. The last, oh, ten years, up to say, '07, which still counts a little bit, we were still getting some foundation funding. But a lot of our funding was from individuals, also, George Miller being one.

Lage: Do you know why this shift?

08-01:40:11

Graff: I think for one thing, more of the wealth was in individuals. And [William Henry "Bill"] Gates and [Warren] Buffett and others moved the money back into foundations. But a lot of the Silicon Valley funding, which is local to us and should've been accessible to us, was going eastward.

Lage: Eastward to EDF?

08-01:40:36

Graff: EDF. We also got some funding from Southern California. And there's a whole different sort of history. Remarkably, as of a month ago, EDF no longer has a Southern California office.

Lage: And did they during your time?

08-01:40:52

Graff: Well, we did. And that's another story, set of stories. NRDC never opened an office— Oh, another thing I want to talk about I was instrumental in the opening of the Colorado office. And I can still remember sitting with Dick Lamm in his kitchen, at his home—this is before he was governor—plotting the creation of an EDF Colorado office.

Lage: And what was his interest in that?

08-01:41:27

Graff: He was a big environmentalist. He later on became a big anti-immigration guy, as well. But he was the leader of the No on Olympics movement in Colorado, based on his environmental judgments.

Lage: And how did you get connected with him to plot this opening of the office?

08-01:41:54

Graff: Well, I don't remember that. And that would've been very early because I think that office opened maybe '73 or '4. Jim Tripp provided much the same connection to opening our Texas office. And much later, when Fred was already the executive director, he had me fly back to North Carolina to

interview the finalists for the new executive director of the North Carolina office. But interestingly, we expanded in what is more of the nation's heartland—North Carolina, Texas and Colorado; Colorado, Texas, North Carolina—than NRDC, who has basically remained a coastal organization, New York, Washington, San Francisco, L.A.

Lage: And tell me more about the Southern California office.

08-01:42:57

Graff: Well, the basic origin of that was a staff meeting, a national staff meeting, where Paula Hayes, who called a lot of the shots on what EDF could afford to spend money on or not, was getting nervous about NRDC monopolizing the L.A. area.

Lage: It's this interesting tension that keeps coming up with NRDC.

08-01:43:25

Graff: And so she gave the go-ahead to open in L.A. And basically, two things happened after that. The first go-ahead was a half-measure to start doing programs in L.A. So we did a transportation program down there. And my good friend and colleague at that time—well, he became a colleague at that time—Michael Cameron—started an L.A. air project, which evolved into a transportation project, which had no real environmental advocacy. You'd think it would. There was air advocacy, but not transportation-based air advocacy. So that was a program.

Lage: Run out of your office.

08-01:44:22

Graff: Ran out of our office. And then in the course of that, we decided that we couldn't limit ourselves to efficiency and environmental advocacy; we needed to have some connections in the equity community, in what became known as the environmental justice community. And that was also about when that famous letter from the New Mexico EJ people arrived on Fred Krupp's desk.

Lage: Tell me more about that.

08-01:44:57

Graff: You don't know about that? It was also on Carl Pope's desk.

Lage: Yeah, on everybody's desk.

08-01:45:04

Graff: Right. So we started to look for doing more on concern for the disenfranchised and the poor and the minority groups.

Lage: So the impetus for that came from outside, really.

08-01:45:19

Graff: Some of that came from outside a little bit. We always knew it was an issue. And so Michael Cameron had done this initial transportation report on Southern California. I can't remember the name of it. But we decided to do a sequel that included equity as a consideration. And there was a brilliant couple in Berkeley who had personal interest in this subject. Betty Deakin, do you know her?

Lage: Mm-mm.

08-01:46:00

Graff: She teaches in the— I'm not sure what school it is, the planning school, maybe. She has an economics background, but she's interested in planning. And her husband was Greig Harvey, who was one of the early innovators in sort of studying transportation from a technical point of view, running the numbers. And between them and Marty Wachs at UCLA, who then went to Berkeley and back to UCLA, they had numbers basically based on income quartiles, what the transportation expenditures and uses were of people who were poor, working poor, middle class, upper middle class, rich. Those are my characterizations.

Lage: The total spending on transportation, not just public transportation?

08-01:47:16

Graff: Well, that's right, public and cars. Big time on cars. And one of the revelations of the time was that even poor people in the lower quartiles, or quintiles, spend a lot of money on cars. They also spend money on transit. But L.A. was the quintessential non-transit area. Although the LAMTC is one of the biggest transit agencies in the world.

Lage: [laughs] You'd never know it.

08-01:47:52

Graff: No. Well, you'd know it if you were a poor person. And then, of course, they were trying— One of the big controversies that Marty Wachs and LeRoy Graymer and others got into was, did it make sense to invest in rail transit in Southern California? They were mostly advocates of bus transit.

Lage: And they were looking at it from an economic—

08-01:48:15

Graff: Economic point of view. And of course, up here— What's his name? I'm spacing out; I'll remember it. He was the big critic of BART and thought it was bad expenditures. Did you know him? He was a Berkeley professor, Ivin Webber.

Lage: Oh, yes, Mel Webber.

08-01:48:39

Graff: His wife was a tenant of ours at our offices on Dwight Way. Carolyn Webber. So we were sort of linked into that community somehow. Anyway, the upshot of all that—one of the upshots—was we did a report on efficiency and equity in Southern California transportation. And like the case where we got Harvey Banks to be the forward writer for Rob Stavins's study, we got Dan Garcia, who was a big, notable head of the city planning commission and a major Hispanic leader in L.A., to write the forward for our equity study down there. Anyway, in the course of that, we got to know the NAACP [National Association for the Advancement of Colored People] Legal Defense Fund people in L.A. And one of their principles was a guy named Robert Garcia. Robert, it turned out, got interested in equity and transportation. And when we got money from the old, old case that we had filed against Cal DOT, even before my time, in L.A., on transportation—

Lage: Filed against who?

08-01:50:06

Graff: Against California Department of Transportation.

Lage: Oh, oh, oh, Caltrans.

08-01:50:12

Graff: It was over the Century Freeway. There was negotiated a settlement that gave us a bunch of money.

Lage: Gave EDF money?

08-01:50:24

Graff: EDF, because we were a plaintiff in that case. That was before my time.

Lage: Wow.

08-01:50:29

Graff: The lawyer involved was Carlyle Hall. Carlyle Hall was a year ahead of me in law school, was on the *Law Review*. And when they settled the case, whatever it was, fifteen years, twenty years later, EDF, the Sierra Club and the NAACP, I think, who were the plaintiffs, got substantial sums of money. The only constriction on which was it had to be used on issues in the corridor, loosely defined, of the Century Freeway. So we had money to spend in L.A., based on this legal settlement. And we offered Robert Garcia a job to help work on that.

Lage: To work on transportation issues?

08-01:51:23

Graff: Right, in Southern California. Well, no. I'm misstating the facts. We offered him a job up here. But it would've been in part, to work on that. And then in complicated—

Lage: And this was before your office, before you had a Southern California office.

08-01:51:49

Graff: Right. But then the reason he was interested in this was that his wife, who was also a lawyer, was looking to move to San Francisco. And during the time all this stuff happened, she changed her mind and wanted to stay in L.A.

Lage: [laughs] Things get complicated.

08-01:51:58

Graff: And so we hired him, somewhat reluctantly, to open an L.A. office.

Lage: Oh, oh, oh. Okay. So this is the origins of the L.A. office.

08-01:52:07

Graff: L.A. office. And then he was a piece of work, let's say. Interesting, very interesting guy. And he hired another major player for us in L.A. named Jerilyn Mendoza, and did some interesting for a period of about a decade.

Lage: And was that office completely independent from your office?

08-01:52:19

Graff: Yes.

Lage: And just reported to the national—

08-01:52:31

Graff: Well, the way EDF people reported changed over time. There was a big strategic plan in the mid-nineties, the most important upshot of which structurally was that we deemphasized the regional model and emphasized the policy silo-based model. And so I, interestingly—this gets into personalities, too—was named transportation program chair.

Lage: Despite all your water—

08-01:53:17

Graff: Despite my water work. But I was working with Robert and Michael at that time, and with Michael Replogle in DC, with Jim Tripp. So I was nominally their boss. Whereas in my water work, which was two-thirds of my time, at least, I was reporting to Melinda Taylor in Texas.

Lage: [laughs] Did that make a difference, or did people kind of let it go?

08-01:53:45

Graff: People adjusted. Melinda did not dictate, but she was responsible for budgets and for allocation of staff, to some degree. And that model is still the model that governs. Although there was another strategic planning deal that came down just about the time I was going part-time, and I got sick in '07, that created a new tier of officers who are vice presidents for various functions. And at this point, there's a regional vice president and there's a water—

What's it called?—land, water and wildlife vice president in DC. And their responsibilities somewhat overlap, I think. I'm not there to observe it.

Lage: Yeah. To see how this actually works out programmatically.

08-01:54:50

Graff: But there was also, at one point, a change, where regional directors became formalized. So I was regional director in California, but nominally, and transportation program manager, and a mere cog in the wheel in the water program.

Lage: And the line of reporting must've been very complicated.

08-01:55:22

Graff: It's complicated. And the tradition of— It's hard to maintain traditions of independence and innovation from the bottom up, in that kind of a structure. And I was somewhat of an unusual case, since I had so much tenure. So mostly, I was left alone. And then surprisingly, in about '03, even the Hetch Hetchy project was approved.

Lage: Approved by national?

08-01:55:57

Graff: By national.

Lage: And you say surprisingly. Why?

08-01:56:01

Graff: Well, it's about as controversial a project as we've run since tackling the dams and the Corps of Engineers and the Bureau of Reclamation.

Lage: Yeah, it sort of takes you back to that era, doesn't it?

08-01:56:12

Graff: Right. It does.

Lage: Challenging the establishment.

08-01:56:16

Graff: Right. And there're basically three reasons why that was approved. Four reasons. One was New York got distracted by 9/11. And two, and probably the most important reason, is we had funding, significant funding. Three, Spreck Rosekrans is passionate on the subject. And four, I had that tenure, and because of New York's distraction and because of the funding, they just didn't want to tackle it. And for a couple of years, to the amazement of many, probably even us, it was one of EDF's featured projects. Partly because of the Pulitzer Prize that the *Bee* won [in 2005 for an editorial series on the restoration of Hetch Hetchy]. Bob Semple of the *New York Times* wrote an editorial in favor of it. I mean in favor of our position. And he had a ton of fun

with it because the *New York Times* had been one of the opponents of Hetch Hetchy dam back at the turn of the century, turn of the *last* century. So we got surprising support from surprising circles. John Garamendi endorsed it, Dan Lundgren ended up endorsing it. Donald Hodel [former secretary of Interior] had endorsed it, even in the eighties.

Lage: Yeah, that's what was the surprising thing.

08-01:57:52

Graff: Right. And so we got to know Don. And Don's in the film. Have you seen the film?

Lage: No.

08-01:57:58

Graff: There's a Hetch Hetchy film that Harrison Ford narrates.

Lage: It captures so many people's imagination.

08-01:58:04

Graff: Right. And its politics are completely weird, which made it a lot of fun for me. And it's really the last serious legal writing I've done.

Lage: Now, is something we should also come back to?

08-01:58:17

Graff: Yeah. Oh, yeah.

Lage: I think it's really important to talk about it in some depth.

08-01:58:20

Graff: Right. But I think it helped sustained me in my last years of EDF. The weight of Newt Gingrich and George H. W. Bush, I don't know if I would've tolerated it.

Lage: On top of all these changes in your own organization.

08-01:58:41

Graff: Right, internally. But I made it to '07 and '09.

Lage: Yeah. Well, that's great. We'd come back to the issues of your work, but this gives us kind of a framework. Is this a good place to stop? We're almost at the two-hour mark here.

08-01:58:57

Graff: Yeah, let me see. I have a lot of other names. Maybe we'll come back to some of these when we talk about the issues involved. I mentioned Pam Lloyd as a funder. She and her husband Jim have been loyal, long time funders.

Lage: And what's her background?

08-01:59:23

Graff: Her dad was the first chief scientist on the National Park Service. His name is Wright, W-R-I-G-H-T. And Jim is a general contractor. He's retired now. But he did, among other things, the Getty Museum in Los Angeles. And obviously, I don't know where all their money comes from.

Lage: Probably not from being the first chief scientist.

08-01:59:56

Graff: Anyway, she became a personal friend. Jim Compton was a personal friend. Although not on that level, Tom Layton, who's the Gerbode Foundation; Tom Silk, who was originally with the Columbia Foundation, then he and his wife divorced and Susan [Silk] took over. He and I and Mike Herz, who was the head of the Oceanic Society, and John Racanelli, who wrote a major water decision, later on did a sailing trip off Baja together. So those were all kind of funding names that I thought I should mention. And then I think I mentioned, but didn't mention his name, Rod Cameron, who was the first executive director at EDF, raised \$100,000, which was a big sum in those days.

Lage: You did, you told this. Julian Price

08-02:00:59

Graff: Right. So those are the ones I thought—

Lage: What about the Connell Foundation? I noticed that that—

08-02:01:03

Graff: Oh, yeah. Right. They gave us money for some of the L.A. water. That's right.

Lage: For L.A. They have some connection to Richard Wilson.

08-02:01:10

Graff: Richard Wilson. Oh, yes. And Rich endorsed us, in part, because of our work on water stuff. He and I have talked off and on about that. Then he kind of drifted away. I remember a session at the— What's the Commonwealth Club equivalent in L.A.? I think it's the Century Club. With one of the Connell Foundation staff. But they have real geographic restrictions. But I've stayed friends with them. There's a guy named—it's an Armenian name—Mazmanian, I think, who's a USC person, Daniel Mazmanian, who liked our transportation work a lot, too.

Lage: And was he connected?

08-02:00:14

Graff: He was connected with Connell. And Jane Pisano was connected. You know who Jane is? Jane's husband, Mark Pisano, was head of SCAG [Southern California Association of Governments] for many, many years. He and I were friends, and then Jane was a friend secondarily. I knew him a lot better than I knew her.

Lage: Now, you say, “We were friends.” Were you friends first? Or you were friends through the work and gaining—

08-02:02:37

Graff: No. No, through the work. Although friends, too. His niece was Samantha’s college roommate. And that became complicated later because she became alienated from her father, who was Mark’s brother. So that always was a topic of conversation with Mark. But Mark, I got to know—and we should talk about this in a later thing—through some of the statewide environmental and economic convening groups, notably CCEEB and CFEE, while Mark was active in both of those and I was, to a lesser degree. Well, to the same degree, pretty much, in CFEE and somewhat lesser in CCEEB. Which reminds me, one of the other things I do want to talk about in a future interview is all the trips I got to take.

Lage: You talked some about an early trip where you went with CCEEB.

08-02:03:44

Graff: Right, that was the CCEEB to Scandinavia and England, Germany. And then I came upon in the notes, the SUNY notes, of a speech I gave, which I’d completely forgotten, in Vienna.

Lage: To a World Congress?

08-02:03:58

Graff: Yeah.

Lage: I was going to ask you about that.

08-02:04:00

Graff: And I’m going to ask for that document because I—

Lage: Yeah. You don’t have it?

08-02:04:05

Graff: No. But two things happened on that trip. I must’ve given a talk in Vienna. And then, because I was already in Europe, I attended the first ever Green Party convention—

Lage: Oh, fascinating.

08-02:04:19

Graff: —in Germany. And my German was just good enough to sort of absorb some of what was going on. But that was a huge deal in Europe at the time.

Lage: Do you want to talk about that now, or should we save that?

08-02:04:33

Graff: No, I want to save that till I— I definitely want to see what I said.

Lage: Yeah, see what you said and maybe we'll have a topic of trips in the service of—

08-02:04:42

Graff: I was a gate crasher at the convention.

Lage: At the Green Party.

08-02:04:46

Graff: Yeah. I took the train from Vienna to Frankfurt. It was in Frankfurt, which was near where my stepmother was born and raised. And on a personal level, both that trip and the later one were interesting, because this was the country where my grandparents were killed and my parents were expelled or barely—

Lage: That's right. And not just your grandparents, but a whole array of family.

08-02:05:16

Graff: A lot of other people. Yeah.

Lage: Okay, we're going to stop for today.

08-02:05:21

Graff: Good.

Lage: This is our longest interview.

Interview 6: August 4, 2009
Begin Audiofile 9 08-04-2009.mp3

Lage: Okay, we're on once again today. This is the sixth session with Tom Graff, audiofile nine. And today's August 4, 2009. We're finally getting to our topic of electricity issues. [laughs]

09-00:00:20

Graff: Sounds good.

Lage: I'd like to just start, to set us back in that time, in the early seventies, of why that issue was one that you wanted to concentrate on.

09-00:00:33

Graff: Well, I think there were probably at least two factors. The element of the energy problem that we eventually tackled—this is EDF at large, as well as EDF California—was electricity. But what was most in people's minds in the early seventies was the first big oil crisis, which was actually '73. One funny story— not funny, but interesting story about that was the Auburn EIS trial was in US District Court in Sacramento, in front of Judge McBride. And that was right in the middle of the shortages, the gas lines of the time. And we used to commute up there every day, rather than stay up there. It was Jerry Meral and I from EDF; it was John Leshy from NRDC, who later became Department of Interior solicitor, and a distinguished law professor also; and Phil Williams, who was our technical expert on floods. And there were really two aspects to the case, those involving flood prevention and those involving water supply.

Lage: But not electricity.

09-00:01:59

Graff: No, no. But that long-winded story was intended to remind people of the first energy crisis. Then there was another one in '79, right? When the Iranian hostages were taken and Carter kind of blew it.

Lage: And these were big energy crises, had more impact than the recent one we've had.

09-00:02:23

Graff: Right, right, right, in terms of—

Lage: Because you had to get in line to get your gas.

09-00:02:29

Graff: But we, as it turned out, had easy access to gas because the kept the gas stations by the interstates well stocked. So we always would get gas when we were in Davis or at Mace Boulevard or somewhere on 80, on our way to or from court. So energy was becoming a big issues, and shortages and—

Lage: And nuclear.

09-00:02:57

Graff: And nuclear was also involved. Now, why did we do the PUC? I think—I'm going to venture a guess, which could be wrong—that it was really the original brainstorm of a fellow by the name of Ernst "Hasty" Habicht, who was a recent hire, hired about the same time I was, in the New York office. And he was interested in utilities and how they were inefficient and so on.

Lage: Was he a lawyer also?

09-00:03:35

Graff: No, he was a—I don't exactly remember. He was either an engineer or a physicist. A lot of physicists ventured into the electricity field. And one of the more well known in California is Art Rosenfeld, who is—

Lage: Up at the Lawrence Berkeley Lab?

09-00:03:54

Graff: With Lawrence Berkeley Lab. He trained in physics with [Enrico] Fermi, I think, or one of the early— and then branched out into conservation and buildings and things like that. Dave Goldstein was eventually hired by NRDC, and became a MacArthur Fellow many years later, and is one of the world's experts now on buildings and appliances.

Lage: And where was he located?

09-00:04:21

Graff: He was local. He was a grad student of Rosenfeld's, when he started out.

Lage: It's an interesting kind of move for a Berkeley physicist, from—

09-00:04:32

Graff: Right. It is. They ought to be interviewed, Art or David or—

Lage: Yeah. Exactly what pushed them in that direction, whether it was social issues or lack of funding for high energy physics. [chuckles]

09-00:04:46

Graff: But they were witnesses for us in our original cases.

Lage: But you think it was Hasty back in New York that prompted looking at PUC as a venue.

09-00:04:57

Graff: Yeah, he sort of prompted it. And anyone who's interested in this should look in the Stony Brook files. I'm sure there's a lot of material. I talked to Hasty recently. I hadn't talked to him in years. He sort of left—he was disgruntled—in the late seventies.

Lage: Oh, left the EDF?

09-00:05:14

Graff: Left EDF and became a consultant, I think. His wife is a top administrator at Stony Brook, so he's stayed on Long Island all those years. And he brought in other people to do East Coast electricity work. But so I looked in my calendars—I was saying this to you before we went on the air, so to speak—and I noticed that a lot of 1974 was taking up with PUC hearings that I participated in, attended. I was a rookie; I didn't know what I was doing. I may have mentioned in an earlier interview that I'd read Alfred Kahn and kind of got a little feel for what regulation was about, and what its strengths and weaknesses were, and what its point was. And David Roe, in his book, makes this point. Utilities that supply electricity and gas are kind of unique among big businesses, in that they're monopolies, essentially. And so they need to be regulated. And there's a long tradition of regulating electricity utilities. But the traditions that it evolved and that faced this young lawyer were somewhat bizarre, really.

Lage: In what respect?

09-00:06:44

Graff: Well, it was a kind of a push-pull struggle between the utilities and the regulators at the PUC, but there was essentially one decision, which is, this is what you can charge your customers. And a lot of subtleties had evolved long before I got involved. Things like differential rates for consumers, for residential consumers and for industrial. And lo and behold, those rates reflected the relative lobbying capabilities of the respective—

Lage: [laughs] Yeah, right. So it's all politics? And then, also weren't there price breaks for big users?

09-00:07:43

Graff: Oh, yeah. Oh, yeah.

Lage: The more you use, the less you pay.

09-00:07:44

Graff: Right. Decreasing block rates, is what it was called. And one of our early efforts was to undo that; both to flatten the rates, or ideally, to increase blocks within consumer groups. And to have time-of-day pricing, because—

Lage: You wanted time-of-day pricing?

09-00:08:07

Graff: Yes. And that's what Vickrey, Bill Vickrey, later a Nobel Prize winner, testified to. The basic argument there is that utilities build the plants, invest in plants to meet the peak load, which occurs the hottest day of the summer, in California; the coldest day of the winter in the Northwest. And of course, there was trading between the two. We would get power from the Northwest

in the summer; they would get it from California in the winter. But even with those adjustments, there were utilities built for the peak periods. And utilities were compensated, at least nominally, by the set-up at the PUC, according to how much plant they invested in.

Lage: I see. So their actual investment in hardware, plants—

09-00:09:07

Graff: Right. And that became an issue for them during the energy crisis, because these rate cases plodded on and it was a year or two before they finished so that the rates could be adjusted. And when all of a sudden the price of oil—which is really important in California, oil and gas later—spiked, they were stuck with their old rates. So they put on campaigns to get special rates added to the existing rates to reflect the cost of what was considered an operating expense, and therefore, you couldn't earn a rate of return on it. You just pass it through. But they had costs. That was not what the utilities wanted. But from my personal point of view, it was basically an education. I tilted at windmills and barely got a little bit done. I had a couple of interesting witnesses. I pulled in a fellow named Bob Budnitz.

Lage: Budnitz?

09-00:10:19

Graff: Budnitz, B-U-D-N-I-T-Z, who was also at Lawrence Berkeley Lab at the time, but who was an expert in nuclear, or he later became an expert in nuclear. But his testimony was on PG&E's research budget, which nobody had really looked at. And I questioned, why are you doing all this, spending all this money at EPRI? Which is the Electric Power Research Institute. It's kind of the research arm of the whole utility industry, nationwide.

Lage: So it's privately funded by the utilities.

09-00:10:59

Graff: Pretty much, yeah. A guy named Chauncey Starr headed it. Pretty well known in nuclear circles. And lo and behold, there was a hugely disproportionate amount of research spending, both at the utilities and at EPRI, on nuclear, and almost nothing on conservation or alternatives—wind or solar or whatever. So Budnitz had the courage to question that, just say, shouldn't this be a topic, at least, of conversation?

Lage: Yeah, yeah. So you were bringing up things that may have never been brought up before the PUC.

09-00:11:37

Graff: Right, right. And again, as David Roe describes, the PUC was sort of not set up for that. They had very elaborate public involvement rules that were nominally open to the public. And one person that took a lot of advantage of that was Sylvia Siegel.

Lage: I remember her in TURN.

09-00:12:03

Graff: Yeah, TURN, right.

Lage: Toward Utility Rate Normalization?

09-00:12:09

Graff: Very good. And Sylvia was a character, even by the time I knew her, a somewhat elderly lady who was a firebrand. But my suspicion was always that PG&E actually liked having her around because she could make a lot of noise; the press would respond to that. And it really didn't make much of a difference, in the end.

Lage: Did she not get to the underlying issues, do you think?

09-00:12:37

Graff: That's what I would argue.

Lage: It was just focused on, they're charging too much, they're making too much money?

09-00:12:41

Graff: Right, right. TURN, to its credit, over the years evolved into a more sophisticated organization.

Lage: But you had some battles with her, didn't you, over—

09-00:12:54

Graff: Well, later the big battle—and this is jumping ahead a bit—came. And it's interesting, David Roe doesn't remember it this way. But once he and I and Zach Willey were all at the first office, the Durant office, at the old—I thought it was a sorority house; he says it was fraternity. Somehow I have this vision of us having a conversation in the hall, where all of us who had been one form of— well left of center, sort of got to the point where we said, PG&E's not going to take conservation investment seriously unless it can make a profit on it.

Lage: Kind of accepting the capitalist system.

09-00:13:54

Graff: The system. But in the regulatory context. But that meant having to advocate that they would get the same rate of return on utility investments— The way we used to call it was the residential side of the meter investment, that they would subsidize as they did on a utility plant or a transmission line. That was a big breakthrough.

Lage: Was that an idea that you folks came up with? Or was it floating around then?

09-00:14:28
Graff: Well, for us, it was a breakthrough. Now, new ideas—

Lage: Where they come from.

09-00:14:37
Graff: Right.

Lage: And when you say you remember this, vaguely remember this conversation—

09-00:14:43
Graff: Well, it was kind of like—

Lage: —it would've been Willey and—

09-00:14:45
Graff: And Roe and I. That was a few years later.

Lage: And how did Roe remember it? You said Roe didn't remember it this way.

09-00:14:51
Graff: He just didn't remember the epiphany that—

Lage: I see.

09-00:14:53
Graff: —the one time when we kind of—

Lage: When you said, ah-ha.

09-00:14:56
Graff: Ah-ah, right. But it was controversial. Sylvia never accepted it. And that's what brought it to mind now. And the other guy who took a long time to accept it was Amory Lovins, who was—

Lage: Ah-ha. I wanted to ask you about him.

09-00:15:13
Graff: He was sort of one of our colleagues, but also a competitor for attention in the conservation and alternatives world.

Lage: Now, he didn't accept it. Now he seems so much into "it makes business sense to conserve."

09-00:15:30
Graff: Yeah. Oh, yeah. No, he came around, he came around. But we were first.
[they laugh]

Lage: Did you have conversations with him, or was it—

09-00:15:39

Graff: Yeah, we did. Roe would really remember more. I don't think I ever had a direct conversation with Amory. I went to a couple of his lectures. But David did, and Zach might've. Zach is kind of a keep-to-yourself sort of person, wouldn't have reached out. And Lovins is this big ego. And so I think it was David who had the conversation, but I'm not sure.

Lage: But he didn't accept the idea of —

09-00:16:15

Graff: It took him a while to come around. Took Sylvia a long time to come around, if she ever did. And there are arguments, there are equity arguments against it. And in fact, it sort of has a cap-and-trade application later. If Ann Lage gets your insulation partially or wholly paid for by PG&E, you benefit more than everyone else who's having foregone investment in a parkland or in a big gas line or whatever it might be. That was Sylvia's point, her substantive point.

Lage: Now, what was her point?

09-00:17:07

Graff: That the people who actually got the investment—

Lage: The people who put the insulation in—

09-00:17:12

Graff: The insulation in or got the updated appliance or whatever it might be.

Lage: And it takes a certain amount of capital just to take advantage of that.

09-00:17:22

Graff: Right, right. Well, and that's PG&E's capital, on which it's earning a return. And yet there then is a— the electric or gas bills then go down for that individual—

Lage: For that person.

09-00:17:35

Graff: —much more than for everyone else, who just gets a tiny fraction of the benefit. So there's an argument for that. And even now, we're doing these cash for clunkers. And the people who get \$4500 of a freebie for the next car are making off better than everyone else, right? Even though it's stimulating the economy.

Lage: And the social benefit of getting the car off the road, too. But that's another—

09-00:18:04

Graff: Right. Well, to the extent they are getting their own— they're suffering from their own pollution. But that's usually at the back, right?

Lage: Yeah. [they laugh]

09-00:18:15

Graff: So those issues of equity crop up, and they crop up in cap and trade, too. Anyway, that came up in the second round of our electricity work, my electricity work. But I was doing that electricity work, the early work in— I think it started in late '73, continued into '74. '72 was dominated, and early '73, by water cases.

Lage: Okay. So how would you describe this first round?

09-00:18:53

Graff: Well, it was these rate cases. I would go to hearings and cross-examine PG&E witnesses and staff witnesses, PUC staff witnesses.

Lage: And you could do that? What was your standing with the PUC?

09-00:19:05

Graff: Well, that was the unusual thing about utility cases, which is mentioned in David's book, that unlike formal litigation, rules have evolved over time at the PUC to allow customers to participate.

Lage: So you just had the same standing as any other customer.

09-00:19:29

Graff: Right. As a group, but yeah. Later, there became more formal rules. There was a public advocate who was brought in, kind of like an ombudsman, to encourage public participation. And eventually, there were rules for fees, which were promoted heavily by TURN, particularly, and others like them. There's a group like TURN in San Diego.

Lage: Fees to be paid for the people that are representing the public?

09-00:19:56

Graff: Attorneys' fees. Yeah, right. And nominally, you have to show benefit, public benefit. But usually, to respond to and to encourage public participation, the PUC would make a show of cutting PG&E's request from 6 percent rate of return to 5½. And that would be attributed to the great work of the interveners. It's a real kabuki dance. Everyone plays their assigned roles. One can attribute a public benefit to an action of an intervening group? The Utilities Commission is quintessentially opaque in how that happens. But anyway, I got an education, which I mostly have forgotten. It turned out that, at least for me, trying to maintain a full fledged water presence, which became more intense later, when Jerry Meral left, which was early in '75 — Have I told that story of Jerry Brown, my transition?

Lage: Oh, yeah, that we covered well.

09-00:21:31

Graff: One thing I think I maybe didn't mention was Jerry Brown's— When I brought Ron Robie's name up originally as a possible appointee— And this

was when Ron was on the water board, and the thought was he would be promoted to chair because the chair, until Brown got elected, had been Win Adams, a really good guy, nice guy, who had been Reagan's cabinet secretary. So he was going to leave; that was obvious. And Jerry Brown said to me, "I don't know if I trust Robie." And I was startled because I always liked Ron a lot. And he said, "Yeah, when the New Melones initiative was on the ballot, I asked Ron to go talk to my father." Did I tell this story?

Lage: I have heard you tell it, but I'm not sure you told it on the tape.

09-00:22:34

Graff: Yeah, okay. Anyway, so according Jerry—and I think I talked about this to Ron many years later—Ron came back and said he couldn't persuade Pat to support the initiative, Prop 17, which Jerry did support, after our trips on the river with him. And so I had assumed that Robie was on the outs. But then in May of '75, he was appointed DWR [Department of Water Resources] director, not water board chair.

Lage: After you had been laid off. [laughs]

09-00:23:08

Graff: Yeah, well after. Four months later.

Lage: So somehow they came—

09-00:23:13

Graff: And then the next day, he called Jerry and invited him up to Sacramento. So our office—

Lage: Was that a hard decision for Jerry Meral, do you know?

09-00:23:22

Graff: I think he decided on the spot, or close to it. And he was an effective conservation advocate. He was also a pretty effective peripheral canal advocate. And our relations were somewhat strained for years thereafter. In fact, one of the things I saw—this is not the strained part—in the calendar is the day Jerry got married, my assignment for that day was to deliver the rabbi to the wedding, which took place on the slopes of Mount Tam [Tamalpais]. And the rabbi was late. And so I was late and the wedding was delayed, because the rabbi wasn't there. Anyway, that's just a little Jerry Meral story. This is my memory, and it could be somewhat flawed. But I was thrown back into water in a more serious way when he left, because there was no—Zach came a couple months later to three months later, to replace Jerry.

Lage: So all this early work with PUC was before Zach came.

09-00:24:36

Graff: It was before Zach came, right. And then he sort of helped to work on it. And I should say, if my memory serves—and I was hoping to get the materials on

this, but haven't—it was in that original rate case, which lasted a couple of years; started, I think, in late '73 and was decided in later '75— I could have that wrong; maybe there were two cases there. They always had sort of cases blending into each other that Lenny Ross, who by then was a PUC commissioner, added his infamous footnote, which was clearly— I had in my mind that it was even in different typeface.

Lage: Really?

09-00:25:28

Graff: Really.

Lage: Now, that would've been after January '75, when Brown came in.

09-00:25:32

Graff: Right, it was '75. Right, it was '75. So that created this opportunity for a new angle on rate regulation, because you could argue, look, the PUC itself said that it was going to investigate not just the rate year— Oh, that was another part of the weirdness of electric utility regulation, was that it was all based on basically, a fictional rate year; on investments and income, rather than projected income for a given twelve-month period. And so in prior times, if a— And I did attempt some of this in the first case, to bring in notions that investments today matter in the future.

Lage: One year is a very limited notion.

09-00:26:33

Graff: Very limited. So the point of Lenny's footnote was to say, "No, testimony on investments that have future impacts *are* admissible in rate proceedings.

Lage: I see, I see.

09-00:26:53

Graff: So when we went back to the next rate proceeding—and it started with me and Zach and some of these other witnesses, like Art Rosenfeld and— Who else?

Lage: Well, you mentioned Bob Budnitz.

09-00:27:07

Graff: Cicchetti. Budnitz, I think, was in the first—

Lage: Was the first one.

09-00:27:13

Graff: We based it on this notion that you couldn't just limit consideration to one year; didn't make any sense. And the PUC staff resisted that initially, almost as much as PG&E did. But there, it was the language in the PUC decision, and I don't remember chapter and verse.

Lage: Do you know the story behind Lenny Ross's putting that language in, or how the rest of the commission— Did they just overlook it when he got it in?

09-00:27:46

Graff: I don't know that. He was the assigned commissioner for the case. The way the PUC worked in those days was—may still—is that there's a commissioner assigned for each case, to preside. He shows up the first day, makes a few formal pronouncements, and then basically, is never seen again. And he did show up for that case, for the follow-on case. Each commissioner has one substantive staff person. For Lenny, it was a guy completely different from him. Lenny was a very cerebral, physically unimposing person; short and sort of looked professorial and so on. The guy he had as his staffer was very different. Kind of salt of the earth kind of guy named Jim {Gerry?}. And Jim did, from time to time, show up at the hearings—this is in the second case—and try to keep the assigned commissioner in some sort of check, and would help remind him of what was in the past decision. But that doesn't answer your question about how that footnote got in there and whether it was—

Lage: Because Lenny was really the only Brown appointee at the time.

09-00:29:19

Graff: Well, by late '75, [Robert] Batinovich was in there. In fact, I noticed in my calendars that I went and met with Batinovich a couple of times in the seventies, in '75.

Lage: So he was another Brown appointee.

09-00:29:39

Graff: And he became president.

Lage: I see. And did he have the same outlook of—

09-00:29:47

Graff: He was a businessman. Brown followed my advice, brought in somebody who was more respectable than Lenny. But one of the interesting questions was the way the PUC is appointed, they have six-year terms. And they're staggered terms. So for the first two years of Brown's governorship, he only had two of his appointees in office. And how the three Republican holdovers, Reagan appointees, reacted to Lenny and Batinovich, I'm not sure. But Batinovich was a businessman, who's a very friendly kind of— What's the right word? A personable guy. And not that many of the issues there are ideological, really. Maybe they fight about, should the rate of return be a little higher, a little lower? It's kind of a pretty sleepy agency. Bill Carlin—his book review there—really aptly describes it as something like, nothing can be as mind bogglingly boring as a PUC rate proceeding.

Lage: Was that difficult to be part of? Or did you feel like you were storming the barricades?

09-00:31:23

Graff: I was iconoclastic and was willing to put up with boredom. And when it's the first time, it's never quite as boring as the second, and certainly the third times.

Lage: Who listens? All the commissioners?

09-00:31:44

Graff: No, no. There's one commissioner. He shows up the first day, and he's gone.

Lage: And then who's there?

09-00:31:49

Graff: There's an administrative law judge, who's a career bureaucrat, and who's heard it all before.

Lage: But he hadn't heard these new arguments.

09-00:31:58

Graff: Well, in anything, personalities matter.

Lage: So he listens, and then who makes the decision?

09-00:32:08

Graff: Well, then he drafts an opinion, which only at the very end, goes to the commissioners. That's the nominal way it's done, in cases that have some public interest. There's obviously more back and forth, both between the assigned commissioner and the administrative law judge, and eventually, among the commissioners. They're subject to the Brown Act, so they're not supposed to meet more than two at a time, other than informally. No, there's meetings where the public can hear what's going on. And that's controversial in a lot of other situations, like utility conferences or later, in the [CCEEB [California Council for Environmental and Economic Balance] conferences. They weren't Brown Act—this is Ralph Brown Act, by the way—approved. So it was always tricky when— And for lobbyists, it was an issue if you wanted to go talk to commissioners. There were originally almost no rules, but eventually, there were two kinds of rules. You couldn't meet with them all at once; you had to meet with them one by one. One, or at most, two at a time. They sometimes evolved rules where they wouldn't meet with parties in cases to talk about cases.

Lage: So that would include you.

09-00:33:39

Graff: Yeah. It was not an issue in those days. And I didn't really visit with the commissioners, even Lenny. That footnote came out of the blue, as far as I was concerned. Lenny had been a friend and a couple election cycles, we watched the returns at our house. He was single. It was Joan, at that time, and I invited him because he would've wanted a place to watch the returns. But I

was saying Jim {Gerry?} was kind of a character. But he was a helpful character. I've totally lost track of him. You know, Lenny later committed suicide.

Lage: Oh, no. I didn't.

09-00:34:25

Graff: You didn't know that? He eventually kind of left the PUC abruptly, went to work for Jimmy Carter, as someone concerned with nuclear weapons proliferation. And then just one day, he was gone.

Lage: Sad.

09-00:34:46

Graff: Oh, yeah, it is sad.

Lage: During the Carter administration.

09-00:34:48

Graff: Yeah, it was '79 or '80.

Lage: So it wasn't that long after.

09-00:34:52

Graff: Yeah. He was too brilliant for his own good.

Lage: What was his background, his education? Physicist?

09-00:35:02

Graff: No. By the time he was twenty-one, he had both a law degree and a PhD in economics from Yale. He was the editor of the *Law Journal* there, too. He was sort of a legend in his own time. He also won the *\$64,000 Question* as a kid.

Lage: Goodness! He *is* a legend. Was he a well known figure?

09-00:35:25

Graff: Well, I think he's been forgotten.

Lage: Forgotten by now.

09-00:35:31

Graff: And he was very unassuming. He didn't lord his brilliance over people. But he was awkward, too and he was not socially— He didn't have a lot of friends. And one of the things that always puzzled me was his relationship with Jim {Gerry?} because Jim was a hale-fellow, well-met kind of guy. And certainly, nowhere in Lenny's class, in terms of intellect. Not that anyone else was, either. But he was just a regular guy. But they seemed to get along very, very well.

Lage: Was Lenny an attorney by trade?

09-00:36:11

Graff: Well, I don't think he ever really practice law. One thing he did—people can look this up—is he co-authored at least one book with someone who became important to cap and trade, in particular, in the United States, a fellow by the name of Peter Passell, P-A-S-S-E-L-L. And Peter, long after that time—well, maybe not; maybe by the early eighties—became an editorial writer at the *New York Times*. But they wrote a book together, Passell and Ross or Ross and Passell. I think it was called *The Best* or *The Most* or *The Best of the Most* or something. I don't remember the name of the book. I probably have it somewhere. Which was kind of a goof book.

Lage: A goof book?

09-00:37:04

Graff: Yeah. I mean it wasn't a serious book.

Lage: I see.

09-00:37:09

Graff: But anyway, Peter and he were friends. But Peter was in New York.

Lage: Well, what was Lenny's— how did he come to Jerry Brown's attention? Or what was he doing?

09-00:37:18

Graff: I don't know the answer to that, originally, but he was his chief of policy during the campaign. And I think I've mentioned earlier that I had—

Lage: That's how you got to know him?

09-00:37:33

Graff: I think I knew him before that. There was a fairly small group that were Harvard and Yale *Law Review*, *Law Journal*, and interconnected in some ways. And Lenny, I think, contrary to most of his peers, to the extent that he had peers, did not—

Lage: [laughs] He must have been a *brilliant* guy, the way you talk about him.

09-00:38:00

Graff: No, he was very unusual. We knew people who knew people. And he came to California. Again, I don't know why that was.

Lage: Well, it's interesting, it's the type of person Jerry Brown surrounded himself with, too.

09-00:38:14

Graff: Yeah. And I don't know how they got connected. But Dan Lowenstein, who's also a pretty brilliant guy, teaches law at UCLA now and became an expert in elections law, he was basically the author of Prop 13, the first Prop 13.

Lage: *The Prop 13?*

09-00:38:38

Graff: Not the tax one, the one that was political reform.

Lage: Oh, yes, yes. I think you mentioned him.

09-00:38:44

Graff: Yeah. And Jerry Brown— it was a lucky thing that Brown was secretary of state.

Lage: When that passed.

09-00:38:53

Graff: Well, when Watergate came around. And so he had the— Well, I don't know if he had the idea; someone in his camp had the idea, why don't we draft a proposition for political reform and take advantage of the Watergate scandal to promote political reform? So when Jerry was running for governor in '74, it was not just that he was the son of a former governor, but he had an issue which was popular at the time. And Dan Lowenstein basically wrote the proposition.

Lage: And so that proposition was on the ballot when Brown ran?

09-00:39:41

Graff: I'm trying to remember whether it was on the June ballot or the November ballot, but it was on the ballot in '74.

Lage: But it is interesting—you've mentioned this before—how the propositions get tied to—

09-00:39:50

Graff: To candidates, right.

Lage: —candidates. And that's another reason why we have so many propositions.
[laughs]

09-00:39:58

Graff: And basically, the secretary of state's office has very few exempt appointees, as far as I know. But there were at least three of them. There was Tom Quinn; Rich Maullin, who became a well known pollster, was one of the lead pollsters for Democrats and environmentalists these days, but became head of the Energy Commission when Brown was elected governor. Quinn became

head of the Air Resources Board. Anyway—I think I’ve mentioned a lot of this before—Dan was his counsel.

Lage: For the Energy Commission work?

09-00:40:39

Graff: No, no, for the secretary of state’s work. And when the other two went off to campaign, he became the chief of staff for that six month period, in the secretary of state’s office. I guess it was the November election, for Prop 13. One of its policies, one of its clauses was the creation of the Fair Political Practices Commission. And Dan was its first chairman.

Lage: Oh, I see.

09-00:41:12

Graff: But anyway, Dan and I were good friends. I went to his wedding; that was my first visit to California.

Lage: Yeah, you mentioned that.

09-00:41:19

Graff: We went to the Watsonville Buddhist church. His wife was a Japanese American; is still a Japanese American and is still his wife, Sharon. Sharon Yagi, I think her name was. Anyway, so I was intertwined with Brown a little bit. I recall Brown used to stay at Dan’s apartment in Sacramento on occasion, because the secretary of state’s office was in Sacramento. Quinn and Maullin were mostly in L.A. You run statewide campaigns from L.A., not from Sacramento. But I met Brown a couple times. That led to our inviting him on that Stanislaus River trip. And then I was invited for a two day seminar at—I think it’s Immaculata College, near Santa Barbara, where I was one of the presenters on environment. Talk about somebody who didn’t know much.

Lage: [laughs] You’re very modest here.

09-00:42:34

Graff: Well, it was ’73.

Lage: Yeah, you were just starting out.

09-00:42:37

Graff: ’73, right.

Lage: Do you remember what you focused on?

09-00:42:42

Graff: I’m pretty glib. [they laugh] I don’t. But I met some interesting people there. One of the other folks that was invited was Mike Boskin. Do you know that name?

Lage: Mm-mm.

09-00:42:58

Graff: Mike Boskin became a big, sort of one of President George W. Bush's principal economic advisors. I think he was even head of the Council on Economic Advisors during the Bush years. He was flexible in his politics. The way we all were invited to this—and this is common; a similar thing happened—although it was a day-long seminar, rather than two days, and it was at Cal actually—when Dianne Feinstein was running for governor in 1990. I was invited by her, also as a water expert by that time. I had slightly more credentials. Sixteen years.

Lage: So this is not unusual, for the candidate to put together a team of experts.

09-00:43:42

Graff: Well, I think what they're doing—and it's usually in advance of when the real campaign gets started—is they want to brief themselves on the issues of the state so that they don't look stupid when they're asked questions as they wander around. And so I did that for Feinstein in '90.

Lage: Do they bring in people with opposing views?

09-00:44:05

Graff: They sometimes do, yeah. I think that happened with Jerry. I don't recall all the details of that two day thing.

Lage: That was early in your career.

09-00:44:16

Graff: Right, but I learned about other issues. The budget and education. I think the way Brown organized it was four half-day sessions on different major topics of the state.

Lage: So do you think that gave you a better sense of how the environment fit into the bigger picture.

09-00:44:37

Graff: Yeah, I think so, particularly early on.

Lage: Because sometimes you get the impression that the environmentalists sort of exclude the other issues, just fight for their—

09-00:44:51

Graff: Well, and that's a problem. I agree with you. For example, today, we should be, as a community and particularly our people in Sacramento, well versed on all the interest groups that were shortchanged in the budget battles, and look to them for support in fighting off huge expenditures for water projects that are not worth the money, not worth the investment.

Lage: Or working together to change all the structural problems that created—

09-00:45:32

Graff: Well, that's hard. There's some of that. Common Cause and environmental groups, and sometimes the state employee unions. There's sort of a loose confederation of good government groups. But sometimes we're in direct disagreement on issues. For example, we're ambivalent on some of the issues around term limits and redistricting.

Lage: Yeah. Tell me why that is. And when you say we, do you mean—

09-00:46:07

Graff: Environmentalists.

Lage: —EDF or environmentalists in general?

09-00:46:09

Graff: Yeah, I don't get involved much in these things.

Lage: But it's interesting.

09-00:46:12

Graff: I remember Walter Zelman in Common Cause was somebody I got involved with around initiatives in the late seventies. I don't remember whether Common Cause became involved in the nuclear initiative or not. And I might mention—we're talking electricity—the nuclear initiative was on the ballot in June of 1976, so Brown was already governor. And Brown, he leaned anti-nuclear, but he was careful.

Lage: And did you get involved in that and have a strong feeling on it?

09-00:46:52

Graff: Yes. Well, I don't have a strong opinion.

Lage: We have to come back to this other question, about state policy, but we'll come back to it.

09-00:46:57

Graff: Okay. Yeah. But Dave Pesonen, who was a neighbor at the time, was the chair of the nuclear initiative. And Alvin Duskin was involved. Do you know who Alvin is?

Lage: Yes.

09-00:47:13

Graff: And Lew Butler somewhat, although he's more establishment than some of the rest of us. And there was a group in Palo Alto who were sort of early Silicon Valley technical people, who were involved in that. Anyway, the part of that that I remember— I remember two things. We used to meet at one of the hotels near the San Francisco Airport so that for people who were flying in

from other parts of the state, it was a convenience. And also people coming up from the peninsula. And I always suspected that the motel rooms that we were meeting in were bugged.

Lage: Now, why is that?

09-00:48:04

Graff: Just because that was the sort of Ralph Nader paranoia at the time. And it may've been true. Not that it was necessary. So that was an initiative. And of course, four years before that—

Lage: Now, what drew you to that? What was your thinking about nuclear power??

09-00:48:29

Graff: It was a personal view. EDF never formally took a position against nuclear power, per se. We were always of the view that there were other investments that were more economic—and coincidentally, safer—for people in both the state and the nation.

Lage: Did you feel it was a safety issue?

09-00:49:02

Graff: My training is in law. And one of the reasons, I think, that I gravitated ultimately to water is that the scientific issues are less at the crux of water reform than in some of the other issues, as for example, nuclear power.

Lage: To really be able to convince yourself—

09-00:49:29

Graff: To know what I was talking about. So I was happy to say—because I was convinced by Rosenfeld and Goldstein and others, then Willey—that there were these other better investments. So I could happily and without—

Lage: Without having to—

09-00:49:48

Graff: Second guessing myself.

Lage: —grapple with, is it really— how dangerous is it?

09-00:49:49

Graff: Right, right. But one of the things that, again, David Roe's book points out, when Zach and I discovered the internal investment plan of PG&E, which had never been— It wasn't even known that there were such things.

Lage: Although, one would suspect they had it, wouldn't we?

09-00:50:16

Graff: But this one was so rudimentary. It was two pages. If you're going to do something like that, you're going to hire consultants and—

Lage: And really plan.

09-00:50:27

Graff: —publish books and really understand what you were looking at.

Lage: Well, describe that in more detail, because I've read the book, but the people listening to this may not know the story.

09-00:50:39

Graff: Right. Well, because of the language in the earlier rate case, we had access to PG&E's files. And Zach was hired in late '75. Jerry Meral left in May. I think he came aboard in the fall. I'm just guessing.

Lage: Zach came in.

09-00:51:03

Graff: Yeah, he came in. And by then, I think we were down to one lawyer. I think Dick Cutting was still there, maybe. But we were a small office. But we were committed to this rate case, so he joined me in this expedition to inspect the documents.

Lage: And you requested certain documents? Or certain types of documents?

09-00:51:37

Graff: Well, we tracked what was in the PUC opinion that said we were entitled to see the PG&E investment plan for the next ten years, I think it was.

Lage: Oh, I see.

09-00:51:51

Graff: And so we showed up in this interior room. PG&E was in a fancy—was and is—headquarters in a fancy office building in San Francisco. But we were in a dungeon, basically. And there were boxes of materials. And I'm not sure how we discovered this two-page thing.

Lage: Do you think it was in a labeled folder?

09-00:52:20

Graff: Well, we should've paid more attention. Or I should've paid more attention. But again, as Roe's book describes— And he wasn't even on the scene then yet, I think. Or maybe he was; maybe he had been hired in— Zach was hired in '75 and David in '76. And EDF was financially—

Lage: Shaky. [laughs]

09-00:52:51

Graff: —shaky at that point. So I think there was a delay in approving the hiring of a third professional.

Lage: Oh, that's the delay. Roe talks about how—

09-00:53:03

Graff: Well, there was also kind of like the interview process. But in those days, there was also more trust in the capabilities of the regional office to find someone useful to the cause. Anyway, I wish I remember more of the details. And I do remember wondering at the time whether this was an advertant, an inadvertent, or just a go-by-the-book disclosure. Attorneys are taught, and sometimes follow, the rules of disclosure. When asked, in depositions or in interrogatories, for information, they—

Lage: They need to produce it.

09-00:53:58

Graff: They need to produce it. But I'm sure it's honored sometimes in the breach.

Lage: Was it immediately obvious— What exactly was it, just so that the story here is fuller.

09-00:54:10

Graff: It was a document which I think had two significant disclosures. One was expected revenues over the ten-year period, and one was expected expenditures over the ten-year period, which were linked. And the part that was politically explosive, potentially, was the revenue side. It had, I think, specific numbers for the immediate year, and maybe for the second year. But in the outlying years, which were eight more, it said something like, expected percentage rate increases of 5 percent, 7 percent, 8 percent, 10 percent. I don't remember the numbers.

Lage: So they were feeling that by building more plants, they could justify increased rates by these amounts?

09-00:55:12

Graff: Well, I think internally, yeah. [background noise] If that had been dropped in the nuclear initiative, it might've had a real impact of PG&E admitting, in an internal document, that they expected very substantial rate increases steadily—

Lage: To cover the costs of all these plants.

09-00:55:52

Graff: —to cover these plants.

Lage: Yeah. Now, you were kept from revealing it. Why was that?

09-00:55:58

Graff: Well, PG&E figured out that we had it, and they filed—

Lage: How did they figure it out?

09-00:56:03

Graff: Well, I can't recall.

Lage: Just something you did after the—

09-00:56:05

Graff: We may have told them, or maybe they were there. I puzzled over that much later, reading David's book. But anyway, they filed a motion to suppress the evidence with the examiner, the administrative law judge at the PUC, which he granted through the end of the campaign, that it would be prejudicial to the politics.

Lage: But it seems rather crucial, not prejudicial. [they laugh]

09-00:56:43

Graff: That's what we thought at the time. But being the sort of—

Lage: Law abiding.

09-00:56:53

Graff: —law abiding lawyer that I was and David was, we did not disclose it until afterwards.

Lage: But you could disclose a year or two, it seemed to me from David's book; you could disclose a couple years of it.

09-00:57:08

Graff: Maybe so. If I remember right, I think I did, off the record, talk to Pesonen about it. And we agreed that it would also look bad. There would certainly be a counter attack. Typical of envirocrazies to not follow the dictates of the law and that sort of thing. And so I think Pesonen ended up agreeing not to disclose it. But I could be wrong about that. He became a friend later on. He was a buddy of Brown's. He eventually became director of forestry. And then later on, he was head of East Bay parks, regional parks. He had been the lawyer fighting with PG&E over the proposed nuclear plant at Bodega Head.

Lage: He had a long history of clashing with PG&E.

09-00:58:33

Graff: Right, right. And his dad, interestingly, was the one scientist with the Bureau of Reclamation at the time Shasta Dam was built.

Lage: Oh, I remember that. Actually, he's one of my interviewees, so I know some of this history.

09-00:58:50

Graff: Yeah. It'd be interesting if that was in there.

Lage: I think it is. He mentioned it.

09-00:58:54

Graff:

Yeah, yeah. So he had an interest in water stuff, as well. But his father, I think, was an engineer. Anyway, I lost track of him eventually, but he was an interesting guy. And he used to run the meetings of the initiative crowd, who were a motley group.

Another person who entered my life in those days, I remembered as I was perusing my calendar, a much more unusual person than David, was somebody named Nick Arguimbau, A-R-G-U-I-M-B-A-U. And I give Nick as much credit as anybody for the defeat of the peripheral canal in 1982.

Lage:

Was he a Sierra Club person?

09-00:59:51

Graff:

Sierra Club activist. And maybe it's premature to get into the— [Lage laughs] Well, we're well into this session. By the way, we need to quit at about twelve, or shortly thereafter at the latest, if I last that long. He was an anti-peripheral canal advocate within the club and within the Bay chapter. And when the club, John Zierold and others—and Carl Pope, loosely—steered the club into support of the canal in '77, I think it was in initially, Nick started a campaign with his then wife, Martha Ture, T-U-R-E, whose father became a prominent economist working with Reagan in Washington later. They were the sort of grassroots spurs to environmental opposition to the canal.

Lage:

And he was also active in the nuclear initiative thing?

09-01:01:14

Graff:

I don't know. I don't think so. But I see his name in the calendar in that time. What else is interesting about the— There's always overlap between things going on in government and things going on in the initiative world and in politics. Oh, I was going to tell one more story about the initiative. There was a rally in the Greek Theater—and I have pictures of it—where the featured speaker was Jacques Cousteau.

Lage:

Interesting they would bring him in.

09-01:02:04

Graff:

Well, he was the famous person. And I was a warm-up speaker for Cousteau, as was Huey Johnson. And the photographs show the three of us onstage, and also speaking. And my main personal memory of that is it's really the only time in my career that I spoke to a large public audience. I spoke on TV a lot of times, both in studio and just with a mike in front of me. But it's a big rush. [they laugh]

Lage:

Something you'd want to do more of?

09-01:03:01

Graff:

Well, I didn't end up doing that much. I'm not a shy person, but I'm not natural—

Lage: Well, you said you had trouble with public speaking, initially.

09-01:03:10

Graff: Public speaking. But the main thing I remember about what I said was that— Jerry Brown was running for president then.

Lage: He was running for nomination.

09-01:03:35

Graff: For nomination. So it would've been before the convention, anyway. Well, I know it was before the Oregon primary, which I think is—

Lage: So he was runny against Jimmy Carter.

09-01:03:47

Graff: Right. It was roughly contemporaneous with the California primary. Anyway, I made some remark as I was speaking, about how the anti-nuclear folks should go up and get Brown to speak out in the Oregon primary.

Lage: Because he *hadn't* taken a real stand.

09-01:04:12

Graff: Yeah, I think he waffled. But I don't know for sure. Well, the other thing that was going on— Well, that was, of course, two years earlier. Excuse me. But the nuclear initiative was in circulation by '74, I think. So the other thing it prompted was the Warren-Alquist Act. I think I might've mentioned that already. So when Jerry Brown was elected, one of his first tasks was to appoint a new commission of five members.

Lage: Energy, Conservation and Renewal or something. Was that the name of it?

09-01:04:59

Graff: Yeah. Well, it wasn't— Most people, even then referred to it as the Energy Commission. But Richard Maullin was appointed the first chair. M-A-U-L-L-I-N. And I knew a couple of the other commissioners. Ron Doctor was not directly part of Rosenfeld's group, but he was a conservation guy from Berkeley.

Lage: And he was on it?

09-01:06:29

Graff: And I guess Rosenfeld was on it. I don't know about initial—

Lage: Now, Roe refers to that commission kind of derogatorily, that nothing much happened. But you appeared in front of it.

09-01:05:40

Graff: Well, we used to appear.

Lage: And how did you feel it was working?

09-01:05:44

Graff: Well, it didn't have power. It had some power; it had siting authority.

Lage: Which was important.

09-01:05:54

Graff: Which could be important. It ended up taking finding authority in conservation, and I think appliance standards ended up being delegated to the Energy Commission. And so Art Rosenfeld oriented that way. And ever since then—it's been, what, thirty-five years—there's been this competition between the two agencies.

Lage: PUC and Energy?

09-01:06:25

Graff: PUC and Energy Commission. But the PUC retained the power of the purse and to set the rates. And so it had more leverage, always, even now, over the utilities than the Energy Commission had. Although later on— And actually, this is something we should talk about. One of the things that's *not* in David's book, except very tangentially, was that when the Allen-Warner Valley energy system came up, essentially, there were two big power plants that were at the front of the line.

Lage: For PG&E.

09-01:07:04

Graff: For PG&E and SoCal Edison. And both were joint ventures, ultimately. One was the Sun Desert nuclear plant, where actually San Diego Gas and Electric was the main actor. And then they also were involved somewhat in Palo Verde, which was an Arizona plant, all three California utilities. And then there was the Allen-Warner Valley energy system—

Lage: And that was Utah?

09-01:07:33

Graff: —which was Utah and to some extent, Nevada. And Nevada Power was the utility most involved.

Lage: So these other utilities would build them, but PG&E and Southern Cal Edison—

09-01:07:46

Graff: Would have big percentage stakes in each of them. And most of them, or all of them, were multi-plant projects—

Lage: Oh, they were?

09-01:07:56

Graff: —as first conceived.

Lage: And Allen-Warner was coal. Sun Desert—

09-01:08:00

Graff: And the other two were nuclear.

Lage: The other two were nuclear.

09-01:08:03

Graff: Yeah, Sun Desert. Well, the other two— Palo Verde was also nuclear.

Lage: So you got involved in—

09-01:08:09

Graff: Well, we got involved, to some extent, in the other proceedings, where they were moving along. But the Warren-Alquist Act threw a monkey wrench into all of them, really. By the way, monkey wrench has an application because of Edward Abbey's book. But I don't remember all the legal ins and outs. One of the big legal questions that I think was taken by the utilities to the US Supreme Court was how much California law could regulate utility activities out of state.

Lage: And that would be Energy Commission law, sort of?

09-01:09:08

Graff: Well, it was both. And in that Allen-Warner Valley case, it was Energy Commission; but it was the Warren-Alquist Act, as well.

Lage: Oh, yeah. Another kind of state-rights—

09-01:09:21

Graff: States-rights thing, right. It was Warren-Alquist, I think. But maybe by then— Well, it was Warren-Alquist that became law. And it included both the creation of the Energy Commission and restrictions on nuclear investment.

Lage: And that was kind of a substitute for the initiative.

09-01:09:45

Graff: For the initiative.

Lage: I mean it was supposed to undercut the initiative.

09-01:09:46

Graff: Right. It did undercut the initiative. And Charlie Warren, particularly—I didn't know Alquist well—he played that, in order to get his bill passed. Reagan signed it. And I think the utilities were sufficiently worried about the nuclear initiative that they at least went along, with plans to subvert it later, [they laugh] in litigation. But the restrictions on siting nuclear, till the waste problem is certified to be solved, continue to this day. Anyway, I don't remember the ins and outs of how Warren-Alquist and other laws applied to Allen-Warner Valley.

Lage: Because it was out of state.

09-01:10:48

Graff: It is out of state. But again, the investments were in-state or California right bearers. So that played a role.

Lage: Yeah, that's an interesting question.

09-01:10:58

Graff: Yeah, right.

Lage: Would David Roe have been the lead person on these issues by then?

09-01:11:02

Graff: Well, David Roe was the lead lawyer on utility issues. But another lawyer, David Mastbaum—

Lage: You mentioned him.

09-01:11:14

Graff: —who joined our office, was the lead lawyer on the lawsuit filed, I think, by both Utah International and Nevada Power, to get the coal mine approved and the utility investments approved.

Lage: And that's what that memo was about.

09-01:11:44

Graff: Right, the memo, the Joe Browder memo. We call it the Joe Browder memo. It's sort of unfair to him to call it that, because it wasn't his memo; it was about him.

Lage: It was a memo written about *by* Utah, right?

09-01:11:57

Graff: By Utah, UII, Utah International, Inc. But it was about a meeting their lobbyists had with the Interior Department. Notably, Joe was, I think, special assistant to Guy Martin, the assistant secretary. But he was really detailed directly to Andrus, the secretary. And in the memo, the infamous memo, which I hope that the archives will give people access to—

Well, we were working two fronts.

Lage: Now, two fronts being?

09-01:13:17

Graff: Well, there was the work that David [Roe] and Dan Kirshner, by then, were doing, in a series of cases in so-called OII's, Orders Instituting Investigation, that the—

Lage: In the PUC.

09-01:13:35

Graff:

In the PUC, that it was doing to sort of stall having to make any real decisions on investment plans. By then, Lenny was gone. John Bryson was PUC president. And they were in no rush to conclude that PG&E should have its rates lowered because it wasn't investing in the right stuff. So meanwhile, there was all this other stuff going on in litigation at US District Court in Utah, in which, I believe, the Energy Commission participated. Dian Grueneich was the Energy Commission lawyer working in these matters. She may only have been in utility cases, but I think she was also in the coal case.

Lage:

So this gave the State of California a role that probably, they never would've had.

09-01:14:40

Graff:

Never would've had, right. At the very least, they were watching closely what was going on. And David Mastbaum and Dian became close. I can ask and confirm with David Mastbaum, whether Dian was a participating lawyer or amicus or what, in the coal litigation.

Lage:

And what was EDF?

09-01:15:05

Graff:

We were a party, I think.

Lage:

You were a party.

09-01:15:06

Graff:

Or at least, we were an active amicus. No, I think we were a party because later on, fees became controversial in Utah, in front of Judge [David] Winder, who—

Lage:

Whether you would be—

09-01:15:23

Graff:

Well, whether we were entitled to them. Because he ended up ruling, at least partially, in our favor on issues unrelated to utility investment. David sent me the stuff related to the case— I wasn't involved personally.

Lage:

Well, these are things, too, that can be maybe discovered through the documents.

09-01:15:46

Graff:

Right. As I recall, the stuff he sent me were decisions that were quite long and that I didn't have a role in. So I didn't bring them out.

Lage:

But tell me about the memo, which you did have a role in.

09-01:16:07

Graff:

Well, what happened—

Lage: And what was done with the memo, or what impact would that—

09-01:16:11

Graff: Well, I think it had an impact.

Lage: Well, first say what was it.

09-01:16:16

Graff: Okay, so the memo—

Lage: How did you discover the memo?

09-01:16:19

Graff: Oh, this may also be in David's book, but maybe not. What Mastbaum told me was that someone—and I don't know whether it was UII employee or someone who got the memo some other way—called him up and told him he had something confidential to share. And they arranged to meet at the Starry Plough at eleven o'clock one night. Now, for those who are not Berkeley aficionados, the Starry Plough is a bar on Shattuck Avenue. I don't know if it's in Berkeley or Oakland. I think it's in Berkeley. But it's near the Berkeley-Oakland border.

Anyway, the person who gave it to him swore David to secrecy, and I don't know who it is. And I don't even know what affiliation that person had. David does, but I don't. Anyway, the memo essentially has Browder promising UII expedited consideration and favorable consideration. It's kind of worded somewhat carefully, but not very. This was written by a UII employee to impress his superiors, which was the argument Cecil Andrus later made to Janet Brown, our executive director, that we were unfair to Browder to publicize it. But I had a friend—associate, became a friend, really—who wrote for the *L.A. Times*. And he put the memo on the front page.

Lage: On the front page!

09-01:18:27

Graff: Of the *L.A. Times*.

Lage: Wow.

09-01:18:28

Graff: A story about the memo. And this was, of course, noticed by the utilities, and by Andrus enough so he called Janet. And she wavered. Andrus was a big friend of Robert Redford's, and on many environmental issues, he was very good. On the other hand, Jimmy Carter did an about face after the fiasco with the Iran hostages, and he announced that he was going to expedite energy projects in the West, in his later year in office.

Lage: Yeah. He was under tremendous pressure, really, with the energy crisis.

09-01:19:15

Graff: Right. In some sense, Andrus and Browder, and Guy Martin, for that matter, were acting in accordance with the president's wishes. And there was another instance of Andrus apparently caving to pressure. And we can talk about this when we get to water, also. It was after Rosalynn Carter went to Fresno and met with all the big growers. And there was an about face in the last few months of the Carter administration, on water issues having to do with the Westside, as well.

Lage: Again, election politics, probably.

09-01:20:02

Graff: Well, one would presume. [Lage laughs] Now, the funny thing about that latter story is that— Well, there are two funny things about it. One, they published regs that were much more favorable to Westlands than one would've expected, given Carter's first three years in office. He was a progressive on water issues. And we had very close relations with Guy Martin and Dan Beard, who were the assistant secretary and deputy assistant secretary of water at the time. I don't want to get into this in detail; we'll come back to it. After the election, Carter had lost, they completed the wild and scenic rivers EIS just in time to get it finalized on Andrus's last day in office. And that was a great win for the environment, at the urging of the Brown administration, which lasted two more years. And Huey Johnson and Kirk Marckwald, who was deputy resources secretary—

Lage: They might've shown more their true feelings after the election. They'd already lost. [laughs]

09-01:21:39

Graff: But the interesting thing about the Westlands thing was even though they, from our point of view, caved, Westlands was dissatisfied, from their point of view. And they sued the Interior Department, saying the regs were not favorable enough. And in an action that others in the environmental community still shake their heads at, I persuaded EDF to intervene on James Watt's side, in opposition to Westlands, defending against Westlands litigation.

Lage: Well, why would the environmental community object to that?

09-01:22:27

Graff: Because James Watt was the devil.

Lage: True, but in this case—

09-01:22:31

Graff: Well, that's my argument. And interestingly—and unfortunately, for the history of California water—both the Justice Department and Watt objected to our intervention.

Lage: But they were willing to take the opposite side from Westlands?

09-01:22:53

Graff: Well, yes. Watt made a big fuss about that initially. And that was his argument in court, or his argument in court was, we're firmly opposed to this and we don't need the help of this riffraff. It was stated in slightly more decorous terms. But the judge agreed with him, I think.

Lage: And didn't you let you intervene?

09-01:23:23

Graff: And didn't let us intervene.

Lage: How interesting.

09-01:23:25

Graff: And that cost the environment, because eventually, Watt caved.

Lage: Yeah, Watt probably didn't make a very strong defense.

09-01:23:34

Graff: Well, Watt was a complicated guy. He had been, in the Nixon administration, he had been a lower level bureaucrat in Interior. And for some reason—I never researched it—he didn't like Westlands. Westlands, in a lot of ways, undermined the broader reclamation program in the West. Watt is from Colorado and Wyoming. And ideologically, the Pacific Legal Foundation, which he originated, I think— Or maybe it was the Mountain States [Legal Foundation]. There were these cousin foundations around the West who touted the free enterprise mantra. Gale Norton also came from that background. They saw Westlands as leeches, and they were heavily subsidized.

Lage: Oh, they're not too free market.

09-01:24:53

Graff: They're not free market enough. And so I think he thought that they were still getting a rip off.

Lage: So he may have been happy to intervene.

09-01:25:07

Graff: At least initially. But eventually, the politics wore him down, or something wore him down. [phone rings]

Lage: That's my phone. Let's just stop here for a sec. [audio file stops and re-starts] Okay, we're back on here, after a little break. And you were going to finish off.

09-01:25:24

Graff: Yeah, the Alton Coal UII story.

Lage: That's the Allen-Warner Valley.

09-01:25:31

Graff: Allen-Warner Valley energy system, of which Alton and UII are the fuel supply.

Lage: The coal mine.

09-01:25:41

Graff: Coal mine, right. And that involves the vistas from Bryce Canyon and so on. One of the things that one doesn't know is what one's impact or one's organization's impact is on public policy. And the combination of our work at the PUC and our work in direct opposition to aspects of Allen-Warner Valley overlapped, and probably helped in the decision that really has continued to this day. If you look at PG&E and Edison and Sun Desert and San Diego Gas & Electric, they have not built nuclear or coal plants. On the other hand, one place where I have regrets—and I think maybe my colleagues from the time do, too; maybe not—is that— One of our great strengths was that we were small and mobile. I used to analogize it to being guerrillas.

Lage: Guerrilla warfare.

09-01:27:18

Graff: Guerrilla warfare, vis-à-vis standing armies.

Lage: Yeah, because you were going up against really big corporations.

09-01:27:23

Graff: Big entities, right.

Lage: Utah International must've been a pretty sizeable—

09-01:27:27

Graff: Yeah. Yeah, they were all big. Bigger than us, bigger than we were. But the disadvantage was that our staff, three of them, anyway—David Roe, David Mastbaum, Zach Willey—all moved on. Zach was the first. He has a short attention span. He just got bored; he wanted to do other things. He came back and worked with me on water stuff some in the eighties. And David just had had enough. Went off and wrote the book, taught at Harvard for a semester, as I did. And then when he came back, he wanted to do something different, so he went into toxics and was the basic author of Prop 65.

Lage: Right. So did you not have anyone to follow up on these?

09-01:28:27

Graff: Well, Dan Kirshner stayed with it. But Dan's personality was not one to be a public figure of any kind.

Lage: He assembled and brought the data together.

09-01:28:37

Graff: Well, and he had this remarkable technical achievement, which was the model that one could use and that was— I probably couldn't use it, but people with relative technical skills could use, to really figure out what made sense for utilities and what didn't.

Lage: And even the utilities used it, it sounds like, from the Roe book.

09-01:29:03

Graff: Oh, yeah. Oh, yeah. And we made an income off it for many years.

Lage: Interesting.

09-01:29:09

Graff: And in fact, I think the only thing that really cut off the income stream was the craziness around deregulation in 2000.

Lage: So you couldn't use it again, use it as well.

09-01:29:22

Graff: Well, at least for power plants, that was now going to be deregulated. And so it just didn't fit the model.

Lage: Did you end up defeating Allen-Warner and the coal plant?

09-01:29:36

Graff: Yeah. The day that it met its untimely fate, I was in Howard Allen's office. Howard Allen was the CEO of Southern Cal Edison. And I had gotten to know him.

Lage: But he wasn't part of Allen-Warner.

09-01:30:04

Graff: Oh, yeah. Sure, he was.

Lage: Oh, he was.

09-01:30:06

Graff: Yeah, that plant was basically for the California market.

Lage: But was it named after him?

09-01:30:13

Graff: No, no, no.

Lage: Oh, okay. Not the same Allen.

09-01:39:15

Graff: No, no, no, Allen wasn't—

Lage: Okay. But Howard Allen was the Southern Cal Edison exec, and you were in his office. How was that?

09-01:30:26

Graff: I paid him a visit. He and I were on this European junket, the first of the many fact-finding missions on which I found myself in the twenty years from 1980 to 2000 or so. Anyway, he and I sort of got to know each other and became somewhat friendly, and so I was paying him a courtesy call, basically. The thing I remember about that call, apart from the weirdness of being on the phone in the outer office, waiting for the secretary to let me in, finding out what was going on in San Francisco—

Lage: You mean you were getting a phone call.

09-01:31:16

Graff: I was getting a phone call from David Roe, who was manning the phones in our office. David Mastbaum was, I think, in Sacramento—or maybe it was San Francisco—getting information. So that the three of us were picking up information from different sources. Dian Grueneich from the Energy Commission was someone who was letting us know what was really going on. Anyway, when I got let into Howard's office, palatial office of the CEO of a Fortune 500 corporation, his task was to change to the formal event he was going to that night. So I got to see the CEO of Southern Cal Edison in his shorts. [they laugh]

Lage: Oh, that's wonderful!

09-01:32:14

Graff: Although he may have viewed it as he *made* me see him in his shorts. But he was putting on his tuxedo to get ready to go to some event in Southern California.

Lage: So was the timing of this just by chance?

09-01:32:27

Graff: Yeah, it was by chance. I think, if I remember correctly—and I think I'm now remembering from David's book, not from my memory—Allen decided he had to pull out Southern Cal Edison. And he wrote a letter to the two commissions, the PUC and the Energy Commission, to give them advance notice. And so we got, through our sources, advanced notice, as well.

Lage: Ah. So that's how it was resolved. He pulled out.

09-01:33:06

Graff: Yeah. Now, what the letters actually said was something like, we need to reformulate the project in a way that's more suitable to current conditions. And this was after the 1980 election, so Reagan was now governor.

Lage: No, president.

09-01:33:26

Graff: I mean president. And although the handwriting wasn't entirely on the wall—in fact, it probably wasn't really on the wall at all—there was a possibility that there would be a Republican in Sacramento in a couple years.

Lage: But do you think it was the public pressure, the things like the—

09-01:33:47

Graff: I think that's the imponderable. I never got to go to the boardroom—

Lage: You didn't ask Howard Allen. Now, you had a relationship with him.

09-01:33:58

Graff: Yeah. Well, he was going to say the polite thing. Anyway, that was where I was when Allen-Warner Valley met its untimely death.

Lage: And did PG&E pull out, also? Or was that sufficient to—

09-01:34:14

Graff: Well, again, that's in David's book, that they belatedly sent a comparable letter. I don't know if it was the same day.

Lage: But the initiative came from Southern Cal.

09-01:34:23

Graff: Initiative came from Southern Cal Edison. So one good question somebody could ask is, I thought all your PUC activity was with PG&E. And that was mostly right. It was probably 90 percent of it or 95 percent of it. We did intervene in a couple of Edison cases. But the Allen-Warner Valley stuff was more Edison, although it was nominally Nevada Power and UII.

Lage: Why didn't you intervene more on the Southern Cal Edison?

09-01:34:59

Graff: Resources.

Lage: Just how much you could study both—

09-01:35:01

Graff: Right. And by then, we were also hobnobbing, as well as litigating.

Lage: Now, when you say hobnobbing—

09-01:35:14

Graff: Well, going on European trips.

Lage: Oh, yeah. And getting to—

09-01:35:18

Graff: The PG&E person on that trip was Bart Shackelford, who was not CEO, he was, I think, senior vice president for nuclear and engineering or something like that. So he was responsible for the Diablo plant and for a lot of the other electric side of the PG&E operations. And Howard was a charmer. He was just a guy you could go have a beer with or a glass of wine with. By the way, one of the other people on that trip was Rusty Schweikert. Do you remember him? He was an astronaut who succeeded Maullin as the head of the California Energy Commission. You didn't remember that?

Lage: The name is familiar, but I didn't.

09-01:36:23

Graff: Yeah. Anyway, this is interesting, and kind of unfair to Rusty, maybe, but one of the low lights of the European junket was a bus ride. Our group was taken to a castle in Germany, where we were given this luxurious meal with large amounts of libation of wine. And then we got back on the bus. And it must've been an hour's drive from where we were staying, in our hotel. And Schweikert, among us, either had the most wine or the least capacity to hold it. Anyway, he and a bunch of people were in the front, singing up a storm and carrying on and carousing. Anyway, the upshot was, Rusty did not know German, and the bus driver did not know English. [they laugh] And this was a luxury bus; this was not your standard old AC Transit type bus. And so he ended up taking a wine bottle or a Coke bottle—I don't know what it was—and trying to relieve himself. And people were making jokes about—

Lage: The astronaut. [laughs]

09-01:38:09

Graff: This was the astronaut.

Lage: Is this what they do on the spaceship.

09-01:38:12

Graff: And the bus driver was just beside himself that his bus was being—correctly, by the way—was being damaged by Rusty's activity. Anyway, all the sort of suspicions that people have about these trips—not all, but some—are warranted. You're in informal—

Lage: [laughs] This is what I was going to ask you.

09-01:38:46

Graff: You're in informal circumstances, and nobody's subject to objections by lawyers and that sort of thing. Nor is anyone obliged to testify. But it's an opportunity to really get to know things that you wouldn't otherwise find out, and to have personal relationships with private enterprise and with government. And the role I filled in that first trip, and that has since been filled by others, is you have public-interest people along, so it dresses it up

some. And this was a trip not sponsored by utility money directly; it was sponsored by a nonprofit.

Lage: But the nonprofit was supposed to bring environmentalists and business together.

09-01:39:51

Graff: Somewhat. That first trip was sort of still an experiment. And I think CCEEB [California Council for Environmental and Economic Balance] itself ran the trip. And then they decided that was not appropriate, and so they created this offshoot called CFEE, California Foundation on the Environment and the Economy, which has since been the sponsor of the trips. But it gets money from groups that go on the trip. And on every trip but one, to my recollection, since then, CFEE has brought public-interest reps. The one exception that I know of was right after the Gray Davis administration came into office, or maybe it was the Schwarzenegger administration. It might've been the Schwarzenegger administration. And Susan Kennedy approved government people going as a sufficient balancing of who got to go; it was going to be just government people. And I was, by then, a CFEE board member. And when I got wind of the fact that no public interest rep was going—

This was a trip to Australia and Indonesia, the theme of which was liquefied natural gas [LNG], and it was this huge Australian company that has now had one of their executives imprisoned in China, that was the main sponsor of the trip. And they were trying to get an LNG terminal approved on the California coast. I think they have one under construction just across the border in Mexico. I protested to Pat [Patrick] Mason and said, "You can't do this. You have to have at least one public-interest person on this trip." And so there was a huge, mad scramble. And the NRDC— Cheryl Carter by then had replaced Ralph Cavanagh as the NRDC rep; Ralph had gotten way too cozy with the utilities and the commissions. Susan Kennedy belatedly joined me, and we finally got— What's her name? From the Coastal Group. Was married to Pedro Nava, the assemblyman. Good lady. Kind of like a week before they left.

Lage: Which would be a good one to have, since they were trying to approve one on the California Coast.

09-01:43:03

Graff: Right, right. Well, no, they had someone who was anti-LNG. No, they had to have somebody. But I give myself credit for forcing Pat to do that.

Lage: And Pat's now the head of—

09-01:43:17

Graff: Pat Mason is the head of CFEE, and has been for a long time. But the chair of the board of CFEE for many years was Don Vial, whom I loved, a great man. Do you know Don?

Lage: We were commissioned to do his oral history, but he died before.

09-01:43:38

Graff: He died, yeah.

Lage: So I got a little involved in how much everybody really liked and respected him.

09-01:43:44

Graff: Yeah. No, he was a wonderful man. And he was a professor of industrial relations at Cal, in the early days, and was a big supporter of the 160-acre limitation. He and I always used to talk and joke about that. But he ended up being very close to Mike Peevey. Do you know who Mike is?

Lage: Yes. Mike Peevey was the one who was sort of sponsoring this [oral history with Don Vial].

09-01:44:09

Graff: Right. And they co-hold a chair, I think in the industrial relations department or somewhere like that. Don preceded Mike as the chief aide to the head of state AFL-CIO. A guy named Jack Henning. So when Don was appointed to the PUC by Brown—

Lage: Oh, he was one of the ones appointed?

09-01:44:41

Graff: Yeah. Yeah, later on, that's right. He and John Bryson. Peevey became the successor at— Well, first working for Henning, and then later, when CCEEB was first formed by Pat Brown, Don Vial was the board chair and Mike Peevey was the president.

Lage: How did you think this worked? You've talked about suspicions about the trips, and also even about even this NRDC guy getting too cozy. How did they proceed? Were they trying to bring the public-interest people and government people to the side of industry?

09-01:45:38

Graff: You can never guess all the motives of all the people. Ralph Cavanagh's done great work in energy and electricity. But this was one case where I just happened to go to a board meeting, when the board meetings of CFEE were in May, and I just saw the list of who was going on the next trip. And I said, "Wait a minute."

Lage: But from having been in the meetings, what happens as a public-interest representative, to your outlook?

09-01:46:27

Graff: Well, I think people are affected by who they interact with. And I don't think I'm unique in that respect. I think my reputation is somewhat better among

many than some. But there are people who think that I've been too cozy with corporations and governments and I should stand up more. And I think that's an occupational hazard.

Lage: Yeah. You do come to see their point of view, when you—

09-01:47:04

Graff: Oh, yeah. On the other hand, what many in our environmental community don't recognize is that there are significant differences within these big bureaucracies, public and private, as well.

Lage: There're some good guys, you mean?

09-01:47:24

Graff: Yeah, gooder guys, better guys. And people who argue from within for reform. A former NRDC staffer who I went on a trip to New Zealand with when she was an NRDC staffer is now the— I don't know her exact title, but basically—vice president for environmental affairs at PG&E. And she agonized, when she was originally in the deputy position, whether she should make the switch. And a lot of other environmental people from the professional organizations, and even from the non-professional— Some Sierra club people have ended up— for instance Joe Browder, who was as radical an environmentalist as you could find, before he went in to work for Jimmy Carter. His wife, Louise Dunlap, was head of the National League of Conservation Voters. So people make changes. Laura King Moon was an NRDC employee and then went to East Bay MUD, and then went to the Department of Water Resources and the bureau, and is now working for the state water contractors. Some people make changes.

Lage: Now, when you see these people and how they've made their changes, do you feel like they've also made a difference from within, in these organizations? Or do they go over to a different point of view?

09-01:49:05

Graff: That varies. One mistake I made—and even though I've stayed very good friends with Dan Beard, and Dan sponsored one of my overseas trips, a trip to learn about water conservation in China— And to his credit, even as a US government employee, heading Bureau of Reclamation, he pulled the bureau out of the Three Gorges project. Three Gorges. That's the huge hydro and water complex on the Yangtze, I think.

Lage: You mean our Bureau of Reclamation was involved in that?

09-01:50:00

Graff: Yeah, in a technical assistance kind of way. And the politics of that trip, who we got to see, what ministers were comparable to Dan— I think I should ask him some time what he—

Lage: Was that about Three Gorges, the trip?

09-01:50:22

Graff: No, it was about water conservation, irrigation efficiency. What were they doing? What were we doing? It was a fascinating trip.

Lage: So anyway, you mentioned Dan Beard.

09-01:50:31

Graff: Well, Dan is as environmentally oriented a federal bureaucrat as I ever encountered. And his boss, Guy Martin, had been the head of natural resources in Alaska, and is now a lobbyist in Washington for water interests. But mostly urban. He lobbies for the national urban water interests. Anyway, I think one of our big mistakes, in '93 and through the Clinton years, was to expect that because these good guys, so to speak, were in charge of the agencies that used to be our arch adversaries, that they would reform the activities from within. This was '77. Well, yeah, this was— I'm mixing up my Democratic administrations. I did not—

Lage: Beard was the Clinton era. Wasn't he?

09-01:51:50

Graff: Yeah. Well, now it's coming back to me. Martin was secretary and Beard was deputy assistant secretary in the Carter years.

Lage: Oh, yes. Okay.

09-01:52:03

Graff: And then when Clinton came in, he appointed Babbitt, who appointed Betsy Rieke, R-I-E-K-E, as his assistant secretary for water and science. The terminology and the responsibilities had changed. And Beard came in as [Reclamation] commissioner, at the advice of Congressman Miller. In the intervening years, while the Democrats were in power, Beard was—

Lage: While the *Republicans* were.

09-01:52:43

Graff: Republicans were in power. Did I say Democrats? When the Republicans were in power in the White House, the Democrats retained control of the House. And Miller became chair of the resources committee, natural resources committee at that time. And Beard was his chief of staff. John Lawrence was his personal administrative assistant and eventually, when Beard left, became chief of staff briefly. He's now chief of staff to Nancy Pelosi. And Beard is House administrative officer.

Lage: Oh, really.

- 09-01:53:31
Graff: So he runs things like the House dining room. And he's got a big greening program going on in the capitol.
- Lage: Oh, interesting. You can do your green work everywhere. [they laugh] But you say you expected too much of these so-called good guys.
- 09-01:53:47
Graff: Yeah. So we kind of—
- Lage: The institutional setting really has an impact.
- 09-01:53:53
Graff: It constrains them. Well, the bureau, even before that, stopped building water projects. But we should've kept the pressure on and should've followed more closely, particularly what was going on on the Fish and Wildlife Service side, because one of the big innovations in the CVPIA [Central Valley Project Improvement Act]—and I'm getting way ahead of myself—
- Lage: [laughs] Yes, you are.
- 09-01:54:24
Graff: —is that it really empowered the Fish and Wildlife Service to be innovative and creative. But somebody had to tell them that.
- Lage: And lead.
- 09-01:54:38
Graff: Yeah. And then the way it's connected back to what we were talking about is that you have to not just look at what the institution is, you have to look at who the people are in the institution, whether it's government or private.
- Lage: But that's almost opposite of what you just said, because when you saw these good guys moving into the traditional institutions—
- 09-01:55:06
Graff: Well, but they only were partially effective.
- Lage: —it wasn't enough.
- 09-01:55:09
Graff: It was only partially effective. One of the things— We'll come back to '93. Pete Wilson was governor by then, and complications arose and so on.
- Lage: In terms of CVPIA.
- 09-01:55:24
Graff: The CVPIA implementation at the federal level. And the accord became the big— Anyway.

Lage: [laughs] Yeah, let's not get into that now.

09-01:55:33

Graff: And EDF had changed and other things were factors.

Lage: But tell me more about this whole issue of getting cozy and moving to the other side.

09-01:55:43

Graff: Right. What's coziness, and what's— One of the things about Ralph, which I appreciate—and it's not the way I act—he is very aggressive, or was very aggressive. Every time a CFEE trip goes, just about—and I've only been on two of them, and there've probably been twenty, so I shouldn't say every time, but often—the press gets wind of the trip. It shows up as an expenditure, as an expenditure on legislators' ledgers or what have you. So an enterprising reporter investigates what happens. And they always get the same story. Oh, this foundation, 501(c)(3), sponsored the trip. And it assures that there are public-interest reps and government reps; it's not just a boondoggle for utilities, or more recently, for government legislators and bureaucrats to get to go to fancy hotels in foreign countries. And part of that is the participation of consumer groups and environmental groups. And in all these groups, there are both groups that are more amenable to influence and less, and individuals who are more amenable and less. And every time one of these reporters calls, you've got to be ready with your story. [Lage laughs] And I finally resigned from the CFEE board over the incident where they were going on the trip with no public-interest—

Lage: Oh, you did? Even though you were able to make a change.

09-01:57:51

Graff: Yeah.

Lage: Because it just seemed too much of a front, in a way?

09-01:57:55

Graff: [over Lage] It was too raw, yeah. Well, it wasn't playing by the rules, for one thing. But I was cautious about it because at the same time as I resigned, I was trying to get them to bring— I should remember her name— Let me fill that in later on. Anyway, once I spoke up, then there were a couple other people who did. But I think it was Margot Hornblower, or maybe— I don't know, it was some *L.A. Times* reporter who got on the story. And I shared with her my resignation letter. But she kind of played it fairly straight, as I recall. Anyway, Pat Mason played this game for a year, year and a half, of not accepting my letter. And I'm trying to get someone else from EDF to go on the board. And Ralph was trying to get me to get someone else to go on the board, because if it was just NRDC and not us both, it would look bad. But Ralph is the ultimate pro in fending off these reporters, telling them how valuable the trips are and

how much of a contribution the environmental and other public interest organizations make and so on.

Lage: Now, why did you only make two of the twenty?

09-01:59:46

Graff: Well, it gets complicated, but basically, Pat makes the decisions. He's the Czar. And the trips do have substantially more substantive content than people think. I can't speak for all the participants, but I saw with my own eyes, Bart Shackelford was fascinated by the co-generation plant.

Lage: Now, who's he?

09-02:00:24

Graff: He was the PG&E vice president—

Lage: Oh, yes, yes.

09-02:00:28

Graff: —for engineering. He was nominally only interested in nuclear power. But when we went to see this factory in England that used its own waste train to double, to get maximum use out of the energy feed stock, he asked lots of questions, technical questions. Sort of, how did you come to do this? That's the best example I remember. But the sessions we had with the German parliament or the public officials at the various utilities in the three countries, there was genuine substantive interchange on issues of the day. Those countries had analogous, if not identical problems with, in that case, electricity than we had. The other trip I went on, which was to South America, to Brazil and Argentina and Chile, was a little more catch-as-catch-can, and not as focused on one issue. But to Pat's credit, I had very good contacts in Chile at the time. I now have better contacts in Argentina. But I called ahead and wrote ahead, and we got to meet with specific people who had real knowledge about issues that were of interest. Chile has water marketing, and I got people there involved and the like. Now, I'm not speaking for the other trips that I didn't go on. But the ones I went on did, in fact, have real contact with significant officials.

Lage: Where you yourself learned.

09-02:02:28

Graff: Right.

Lage: Has Chile's water marketing been a successful enterprise?

09-02:02:32

Graff: Well, it depends on who you ask. One thing that's different between Chile and California— The climates are very similar. But the rivers don't all— Santiago is where a couple of rivers come together, and then they make a turn to the west. And the major port of Chile is Valparaiso. Have I got that right? Yeah. I

could be mixing it up, but I think that's right. Chile, the north is desert and the south is rainforest or jungle, the far south. And there's no conveyance system to bring water north, really, no major conveyance system. So the water markets are mainly within constrained basins.

Lage: They can't really take it where it might be much needed.

09-02:03:43

Graff: Right, right. So in California, there's a much more developed water conveyance system. State and federal projects. The Hetch Hetchy, the Mokelumne, the Owens and Mono, and the Colorado River projects.

Lage: So it's really based on the fact that we have all these big projects in place.

09-02:04:08

Graff: Well, there are local markets, as well. And one of the constraints on water markets in both places, I think—but more so here, oddly—is that the traditions aren't as well established here, that money talks. Whoever has the most money gets all the water; that's the fear people have. And then the example is always the Owens Valley. But I think when Pinochet took power in Chile, it was just more— If you had the dough, you could buy out all the poor peasants, and the mining companies in the north or the big growers in other parts of the country got to control the water.

Lage: So it was a Pinochet [initiative], the water marketing—

09-02:05:25

Graff: I think a lot of it took place then. But one of the US experts on Chile and water marketing— My two main Chilean contacts were a professor at UC Davis, who's a very close personal friend and whose wife is Chilean. And she's very well connected with the Christian Democrats down there, who always had a kind of an uneasy relationship with Pinochet, who was more arch right wing. And her family are both well connected in business and academia down there. Marisita Jarvis, she sort of just got a big prize from the Berkeley schools for her volunteer contributions to the Berkeley schools.

Lage: So they live here?

09-02:06:26

Graff: They live here. They live in Berkeley. He commutes to Davis.

Lage: Now, what is his field?

09-02:06:30

Graff: He's in ag, Lovell Jarvis. He's the number two guy at the ag and natural resources school up there. And he did his PhD work in Chile, which is where he met his wife, or at least the way the connection evolved. My oldest daughter, Samantha, and his oldest daughter went to school together in San Francisco, where their mothers each lived, and we met at the father/daughter

dance at the Hamlin School. [Lage laughs] And we've been very close friends and the families have been friends. They had kids and Sharona and I had kids at the same time, so we've been friends as families, went places together and so on. Anyway, so that's where I get Chilean connections. One of his grad students, Carl Bauer, is really the reigning expert on Chilean water markets. He's now at the University of Arizona.

Lage: And are they positive towards them?

09-02:07:35

Graff: Well, Bauer is, but he understands the limitations and argues for limitations. And water markets, unlike conventional markets, and even unlike air markets, are— Well, no, I shouldn't say unlike air markets. But water is a public trust. Water has communities associated with its use. So it's more complicated to be pro-marketing. And some of our left-wing critics and environmental critics, I think—and I say our meaning EDF and me personally, too—don't recognize the extent to which we've gone out of our way to acknowledge those limitations and to try to fold them into deal making on bigger deals and that sort of thing.

Lage: That's something we should come back to, how you fold those concerns in.

09-02:08:39

Graff: Yeah, we'll come back to that. But that's a lot of where the critiques of me personally have come, is that we're too enamored of both the theory and working with ag and with urbans to make deals; that we've been influenced by those personal connections. And again, we'll get to this, but one of the big counters to this, which is now in play, was my leadership in opposing the peripheral canal.

Lage: [laughs] Which we're going to get to.

09-02:09:23

Graff: And so those things intertwine.

Lage: Yeah, it really makes for a very interesting, complex situation.

09-02:09:30

Graff: That's where the Sierra Club and PCL[Planning and Conservation League] were co-opted, long before there were trips.

Lage: Let's stop on that note, because maybe we'll get to peripheral canal next time. Do you think?

09-02:08:45

Graff: Okay. I think we've covered most of what I wanted to cover on energy, too, today.

Lage: Okay, I'm going to turn this off.

Interview 7: August 25, 2009

Begin Audiofile 10 08-25-2009.mp3

Lage: Okay. Let me just say the date is August 25, 2009, and this is our seventh session with Tom Graff, audiofile ten, on our oral history for the Regional Oral History Office. We're back, Tom, after a break of—what?—three weeks or so.

10-00:00:22

Graff: Is that what it's been?

Lage: Right. And we've talked about lawsuits on water issues—New Melones and Auburn and East Bay MUD—but today we were going to start with the peripheral canal, which really took you into the public policy arena.

10-00:00:44

Graff: Good.

Lage: Do you want to say how your involvement with that started, with that issue?

10-00:00:49

Graff: Yes. I think I've mentioned before that I had no particular interest in water prior to joining EDF in 1971. And my first real water case predated even—well, it wasn't a *real* water case—predated even East Bay MUD, New Melones and Auburn cases. It was a case against the Coastside County Water District. Have I already talked a bit about that?

Lage: We talked about that, yes.

10-00:01:22

Graff: Okay. And it was really a growth case. And I've always—

Lage: Often, water *is* growth. Water issues are related to growth.

10-00:01:30

Graff: [over Lage] Well, that's what I was going to mention as a segue to the delta and to the peripheral canal. The anti-coastal growth people in Half Moon Bay and environs didn't want another project to facilitate growth on the coast, and they came to me. Or to EDF. I can't remember why that was, how they found us. We were brand new. The case was, I think, actually even filed in '71, the first year I was there. So within the first four or five months. I was intrepid in those days, I guess, looking back.

Lage: [laughs] And interesting that they did find you. You don't remember how.

10-00:02:18

Graff: No. I remember the woman—Pat Barrentine was her name—with whom I talked. And having an empty plate, it seemed like an interesting case. It turned into one of the first big CEQA [California Environmental Quality Act] cases

in California. One of the notable stories around that case was a very prominent attorney on the other side, representing the district, was a fellow named Tom Jenkins, who later became a Superior Court judge in San Mateo County and was a main partner in the firm of Hanson Bridgett Marcus and Jenkins. And he clearly resented this young whippersnapper trying to bollix up his client's project. And in the course of that, threatened to take me to the state bar to report that I was talking to his clients behind his back.

Lage: Oh, yes, you—

10-00:03:27

Graff: I've mentioned this to you?

Lage: You mentioned that. And was that something that worried you?

10-00:03:32

Graff: Well, I looked it up. Turned out he was full of hot air, basically, that there's a specific exemption in the code of ethics for talking to public officials.

Lage: Oh, they were public officials.

10-00:03:45

Graff: Right, right.

Lage: Were you trying to bring them around to your way of thinking or—

10-00:03:51

Graff: Well, I can't remember the sequence, but we— That was the very early days of CEQA. And I can't remember whether they didn't file an EIR or the one they filed was rudimentary. I think by the time I was talking to them, it was the latter. And I went to them and said, "This is a piece of—" whatever. And their attorney didn't want to hear that. Anyway, so we took it to court and lost, if I remember right, in Superior Court in San Mateo County. I remember driving down to the Redwood City courthouse several times across the San Mateo Bridge, which was then only—what?—two lanes or— It wasn't what it is now. And we took it up on appeal. And the Court of Appeal rendered a very fine opinion. And I remember being surprised by that. Not that I didn't think we were right—

Lage: In your favor.

10-00:05:04

Graff: Yes. One of the few cases I really won. [Lage laughs] Although as it turned out eventually, the district expanded and there's been development on the San Mateo County coast, although the Coastal Commission's curbed it somewhat.

Lage: Right. Well, this was all pre-Coastal Commission.

10-00:05:25

Graff: No, no.

Lage: No? It hadn't passed?

10-00:05:26

Graff: The Coastal Act passed in '72.

Lage: Oh, and this was after that.

10-00:05:28

Graff: The original case. Yeah, when we first started the case, there was no Coastal Commission.

Lage: But by the time it came up—

10-00:05:40

Graff: I've never quite understood why I inherited Mel [Melvin] Lane's respect. Mel eventually, for a brief period of time was an EDF trustee later on. But he was, as you probably remember, not only the first head of BCDC, but then the first head of the Coastal Commission. And I don't know why he and Joan, his wife, who was an early board member of the Irvine Foundation, both favored work we did.

Lage: And how were you aware that they did? Because he was a trustee?

10-00:06:18

Graff: Well, yeah. He was an environmental champion, and his first support and funding and board membership was for Bill Reilly, with originally, the Conservation Foundation and then the World Wildlife Fund. But he had enough room for more than one.

Lage: [chuckles] Right. You mean his philanthropy.

10-00:06:50

Graff: His philanthropy, right. You know, *Sunset* magazine was very successful.

Lage: Right, right. So he gave to Environmental Defense Fund?

10-00:06:57

Graff: Right, right. And I always had great respect for him. He was one of these low-key, understated people who could still dominate a room. And that was sort of my ideal, [laughs] rather than the loudmouths, who didn't appeal to me as much—although some of them may do a lot of good work. Anyway, that was Coastside. So the sort of political side— And I use the word political loosely; not in terms of elections, but legislative work and work with politicians and high appointees in state and federal office. Now, a lot of that on water was done by Jerry Meral in the early days.

Lage: In EDF.

10-00:07:50

Graff: In EDF, from '71 till '75, when he left to go to Sacramento.

Lage: Even though you've said that you had to be careful about how much of that you did.

10-00:07:58

Graff: Right. Well, the one thing that was absolutely prohibited was getting involved in an election involving individuals.

Lage: Right. But lobbying—

10-00:08:10

Graff: Well some lobbying was permitted. And in those days, I don't think we were as careful as we became later on, as the restrictions tightened somewhat. But we also had the advantage of not being in Sacramento so we weren't as visible up there, which also had a substantive downside, potentially.

Lage: So Jerry Meral was active in the policy, political aspects.

10-00:08:42

Graff: Right. And he was the original EDF representative to something called DEAC. That's an acronym for Delta Environment Advisory Committee.

Lage: Which was set up by Reagan, I read.

10-00:08:57

Graff: Set up by Reagan originally. And Bill Gianelli [director of Department of Water Resources under Governor Reagan] was prominent. I eventually got to know him and we had some interesting encounters in later years.

Lage: After he left office, you mean?

10-00:09:11

Graff: Well, and then he went back in with Reagan, to Washington. Yeah, there's a great quote somewhere. And I don't know who Peter is, but Peter is writing, I think, to— I don't know if it was to me or to Jim Tripp. But he cites Gianelli as saying— is talking to somebody. Peter, whoever Peter is, [Lage laughs] was overhearing the conversation and said— It was with reference to Jim. The other person had said Jim was harassing him, so it must've been another federal bureaucrat. And Gianelli said, "Yeah, I had one of those in California." [they laugh]

Lage: So you had kind of a tumultuous—

10-00:10:02

Graff: Yeah. But I think—

Lage: Or maybe it was Jerry Meral that he was talking about.

10-00:10:06

Graff: No, no, he was talking about me. But we had some fun together, actually. I think I've only been in the Pentagon two times or three times in my life. And the first time was in Bill Gianelli's office.

Lage: He had an office in the Pentagon?

10-00:10:22

Graff: Yeah, because the Corps of Engineers—

Lage: Oh, Corps of Engineers, that's what he went back to.

10-00:10:24

Graff: Right, right.

Lage: I'd forgotten that.

10-00:10:26

Graff: And the big thing he did, that he loved more than the Corps, was the Panama Canal. Somehow this one position, assistant secretary for something, had responsibility for the Canal Zone. So he used to enjoy going down there.

Lage: He could play Teddy Roosevelt.

10-00:10:42

Graff: Right. [they laugh] But we actually had one issue in common, which bears on the peripheral canal battle and now on the current one. Because the State Water Project, which was Gianelli's big experience, really much more than federal projects, requires the users, the customers, contractors of the project, to repay the state costs.

Lage: For the water or—

10-00:11:18

Graff: For water and plumbing.

Lage: And for infrastructure?

10-00:11:21

Graff: Infrastructure, right. There're exceptions.

Lage: So it's much more expensive than federal.

10-00:11:27

Graff: State water is considerably more expensive than federal water, and continues to be. And there have been various attempts over the years—Pete Wilson was the main one—to integrate the two projects, which from an operational point of view, makes sense. To have two different operators in pumping plants side by side, pumping water that they release upstream of the delta complicates things. And there have been times, notably, well, different times. But

somewhat more in the peripheral canal era, in the late seventies, even when the Democrats were both in power—Jerry Brown in Sacramento and Carter in the White House—[there have been times] where the differences of opinion between the state and the feds made a difference. And it took until, what?, 1986 for there to be a formal uptake of the so-called coordinated operation agreement for operating the two projects in concert. Which is a smart thing to do. And I'll talk about that later, after we've gone through the canal.

Anyway, so Jerry was more heavily involved in water. I was in the cases—the New Melones and Auburn and East Bay MUD cases—as a litigator. But policy work, he was number one. And then when he left— And I was in energy, also, electricity, as we've talked about.

Lage: Were you excited that he was going to Sacramento. Did you think, this was great?

10-00:13:14

Graff: Oh, I never told you the Robie story, Ron Robie, about Pat Brown.

Lage: Yes. You didn't think he would get nominated because he hadn't convinced Pat Brown.

10-00:13:26

Graff: Right. And I was surprised. I don't know, flabbergasted, I think is too strong. But Jerry called me the day after Ron was appointed and said, "Ron's offered me this position in Sacramento. I think I'm going to take it." And I was surprised.

Lage: Surprised that he was going to take it.

10-00:13:46

Graff: I was surprised that he was offered it.

Lage: Oh.

10-00:13:48

Graff: And not as surprised that— No, I thought— It was kind of ironic, because I had been on Brown's transition staff. And then Jerry was the one going to Sacramento. And during that period, between November of '74 and February of '75, my marriage was breaking up.

Lage: Right.

10-00:14:08

Graff: And we split, separated, the week before Samantha's birthday, in February of '75. So my life was somewhat in turmoil.

Lage: Oh, right during this time when you were on, or just finished the transition work, yeah.

10-00:14:21

Graff: Right. Part of that was my threatening, from Joan's point of view, to move to Sacramento or to have a job in Sacramento. The PUC would've worked from a geographic point of view, because it was in San Francisco. But anyway, so Jerry was leaving.

Lage: So Jerry went to Sacramento. So there was a certain sense that maybe you would've liked that job? Is that what you're saying?

10-00:14:48

Graff: I wouldn't have wanted to be deputy director of water resources. But I think I had a— I don't know if it's humility or fear or just not wanting to be self-important, but I thought— In January of '75, I turned thirty-one years old. And to be a member of the PUC or a big shot in Sacramento was a little weird.

Lage: Didn't fit your image.

10-00:15:32

Graff: Self-image, yeah.

Lage: Yeah. And Jerry Meral was young, also?

10-00:15:36

Graff: He was a year or two older or— I can't remember. But yeah, he was young. He had just finished his PhD when he came to work for EDF. And it was interesting. Michael Palmer was a bit older, but we were a bunch of kids.

Lage: Now, looking back, you say that; but at the time, you probably didn't think of yourself as a kid.

10-00:16:01

Graff: Well, I know I thought, here I am interacting with big, important people and I'm still very young.

Lage: Well, Bill Gianelli would be an example of a real kind of a war horse.

10-00:16:17

Graff: Curmudgeon, right. [Lage laughs] And Ike Livermore and legislators and others in prominent positions.

Lage: So that struck you at the time, it sounds like.

10-00:16:30

Graff: Yeah, and I compared myself to my law school friends, who were working their way up hierarchies in law firms.

Lage: Where you really have to—

10-00:16:42

Graff: Where you start at the bottom.

Lage: —stay in your place.

10-00:16:43

Graff: Right, stay in your— And it takes a long time to become a big shot. And I'm thinking, wow, here I am interacting with these—

Lage: And at some time, you described yourself as kind of a guerrilla warrior.

10-00:16:56

Graff: Right. Yeah.

Lage: Was that the sense you had then?

10-00:16:59

Graff: Well, yes, I think that is right. We were facing big institutions. PG&E, state government, federal government.

Lage: And you were really a very small office, especially—

10-00:17:09

Graff: Yeah, a small office, organization. The things guerrillas can do—and nowadays, we call them terrorists—is that they can pick the place of battle. They didn't have forts to defend, in the old days, or cities or bases.

Lage: Or institutions to kind of shore up and—

10-00:18:40

Graff: Right, right. But I remember even thinking, even back then, that eventually my peer group would grow up and become—some of them, anyway—would become big shots in their much bigger fields, much bigger playgrounds or ponds. I was a big fish in a little pond is one way of looking at it.

Lage: So anyway, we sent Jerry off to Sacramento.

10-00:19:12

Graff: Anyway, so Jerry left. And I can't remember exactly when the transition— Dick Cutting had replaced Michael Palmer, in the meantime. And he stayed around for about another year. But he did very different things; he wasn't involved in— Unlike Palmer and I, who did some of those early water cases together, particularly New Melones, Cutting was doing other things. He was involved in fisheries and in oceans issues. He eventually took a job in Washington. He was also going through a rough patch with his wife, who was a professor at Sonoma State. And so she was commuting up. So he left. Basically, they split, and he went to Washington. So with the vacancy on the Delta Environmental Advisory Committee, I replaced Jerry, not knowing how much time I could commit to it.

Lage: Well, did somebody appoint you, then?

10-00:20:26

Graff: Yeah, I think it was—

Lage: They must've agreed.

10-00:20:28

Graff: Yeah, yeah. I don't know whether it was Gianelli or John Teerink.

Lage: So this advisory committee was environmentalists, and what other type of—

10-00:20:38

Graff: No. Well, yeah, this was an environmental advisory committee.

Lage: Delta Environmental Advisory Committee.

10-00:20:49

Graff: DEAC. It's gone through different names over the years. Maybe it had water users on it. It must've. No, I don't think so because— It was an environmental advisory committee, it was not a mixed committee, which is what Wilson had many years later. And then that carried over.

Lage: So did it have someone from the Sierra Club and—

10-00:21:23

Graff: Right.

Lage: —PCL and—

10-00:21:28

Graff: And fisheries groups and Cal Trout and groups like that. And river groups. Anyway, our job was to develop environmental constraints on water project-delta operations. And I don't recall how explicit it was that it would be the peripheral canal that these constraints would be placed on. But I think formally, in terms of the environmental impact reporting process, they had to consider alternatives, non-canal alternatives.

Lage: So the canal was an idea that had been around for a long time.

10-00:22:27

Graff: Oh, it was around. Some will argue that it was contemplated as part of the State Water Project. The dams at Oroville and on the North Coast, the peripheral canal and the aqueduct at San Luis, were all part of one big plan.

Lage: But this one hadn't been built and now it had the new constraint.

10-00:22:50

Graff: Right. What happened—and some of this predates my on-the-job knowledge—was that the combination of Oroville and the California Aqueduct basically used up the money that they originally authorized in the

1960 election. And I think it was— I don't know whether it was Gianelli, who was DWR director under Reagan from '68 to—

Lage: '75.

10-00:23:30

Graff: No, he didn't last the whole time. John Teerink came in for about a year at the end. Gianelli left. He and Livermore fought over the canal, but I think he never put forth serious effort to get it authorized. And he acquiesced in the early DEAC, which was the Reagan era. And then I think later, Teerink, I think, tried to jump start it and get it going again. So our job were these constraints. And a guy named Don Kelly, who was sort of a fisheries biologist, who's paid for, if I remember right, by Met—

Lage: By?

10-00:24:27

Graff: Metropolitan Water District—but who was an honorable and dedicated fish biologist, kind of led the committee. And I don't know if he was chair or facilitator or something like that. Anyway, we came up with a long list of constraints. And from my point of view, the most important of those was a limit on delta exports, on the amount of water that could be pumped. And everyone agreed; these became consensus recommendations, and we made our recommendations. I can probably look it up, but I'm guessing late '75, maybe early '76. And then I don't recall the exact sequence. I tried to check it with somebody recently. I could check with Jerry Meral, actually. I know that the crucial meeting to authorize the peripheral canal took place in June or July of 1977.

Lage: The crucial meeting of DEAC?

10-00:25:42

Graff: No, of Jerry Brown and his administration, and stakeholders of the various interests. So the urbans, the ags, and the environmentalists. And at that meeting were the Sierra Club and PCL [Planning and Conservation League]. At that meeting were not EDF and the delta farmers and interests.

Lage: So this was a meeting called by Brown?

10-00:26:08

Graff: Jerry Brown.

Lage: And did Jerry Brown lead it, as far as you know?

10-00:26:11

Graff: I think it was in his office. I don't know if he was there the whole time. Somehow, July Fourth sticks in my mind, but I'm not sure it was actually on the holiday, but it was right around that time. Meanwhile, Senator [Ruben S.]

Ayala and I think originally Assemblyman [Lawrence] Kapiloff had introduced bills in the legislature to authorize the canal.

Lage: So why did they leave out particularly the delta farmers, as well as—

10-00:26:44

Graff: Well, I suspected at the time—and I've never confirmed it—that they left out people they thought would not agree under any conditions. And I think that was right. The delta people would not have agreed. And I think—I know—I would not have agreed on the conditions that they came up with. Essentially, what they did with the DEAC recommendations is that they took them all in some form, with the exception of the limitation on delta exports, and took that out.

Lage: Which seemed to you to be the key one.

10-00:27:27

Graff: That was my view. And there's a paper that I wrote a few years later—I think it was '78; it wasn't published until I think '80 or so—called “Increased Diversions from the Sacramento Delta: A Prescription for Environmental Disaster.”

Lage: And what was your basic fear about?

10-00:27:49

Graff: Well, the more water that was taken, the less would be left in the environment, basically, simplistically. I mean, it's complicated science there.

Lage: Less for the bay, is one thing.

10-00:28:01

Graff: The bay, and for migratory fish and for resident fish.

Lage: And what about for the North Coast rivers? Was that a concern?

10-00:28:08

Graff: Well, that's interesting. I interviewed, in preparation for today, the last few days, Kirk Marckwald, Now, Kirk—

Lage: Now, say his name.

10-00:28:18

Graff: M-A-R-C-K-W-A-L-D. Trying to get from him several things, among them, what was going on internally in the Brown administration when the peripheral canal was on the table. He was Huey Johnson's deputy resources secretary. Later on, after the Brown administration closed shop, he came to work for us for a while, kind of as a holding area until he opened his own environmental consulting firm. He was also a Brown appointee. Is that right? Or Davis appointee to the Board of Forestry later. And his wife, Chris Desser, was on

the Coastal Commission, and also was very instrumental to the big national Earth Days, I think.

Lage: And what was her name again?

10-00:29:13

Graff: Desser, D-E-S-S-E-R. Anyway, Kirk started out in the Brown administration as the first head of OAT, the Office of Appropriate Technology.

Lage: Oh. Oh, really?

10-00:29:28

Graff: Yeah. And we're good friends; we've stayed friends all these years. And he's even advising EDF now on structural issues. That's since my time, the last couple years. What was I going to say?

Lage: Oh, you talked to him recently.

10-00:29:55

Graff: Yeah, and he didn't remember any of the early stuff because he didn't get to resources until, I don't know, late '78 or '79.

Lage: Right, because Huey Johnson replaced the first secretary for resources.

10-00:30:09

Graff: Claire [Dedrick], who I had recommended, for better or worse. I like Claire, but she had difficulties in that job. Anyway, so legislation's put forward, Brown announces he's for the canal. And I was not really active directly in the legislative stuff, although I did become friends, working friends, with Leo McCarthy's legislative aide, a woman named Sherry Hankins, who was Art Agnos's wife. And Art was, I think, chief of staff to Leo at that time, before he became mayor of San Francisco. And she was terrific. And so we conspired how we could—

Lage: Improve the legislation, or—

10-00:31:24

Graff: Improve the legislation. Or create issues that would cause the proponents to have second thoughts. Leo was speaker [of the Assembly]. And I was sensitive, because even among Democrats, there was probably a majority for the canal. And Assemblyman Kapiloff, on other issues, was an environmentalist and a liberal.

Lage: That's all very interesting, how they came together on this.

10-00:31:58

Graff: Well, it's a regional thing.

Lage: Was it because they felt they had sufficient environmental constraints? That's the way it was presented initially: here's the best deal we'll ever get.

10-00:32:05

Graff: [over Lage] Sure. Well, that was the way Zierold presented it, and Larry Moss, who were the two guys in the room.

Lage: In the room for the Sierra Club.

10-00:32:18

Graff: Right. I think it was John who was there; I wouldn't swear to it because I wasn't there. But he was the big guy in Sacramento for the Sierra Club at that time. And Larry was the executive director of PCL. Well, anyway—

Lage: Oh, Larry was executive director of PCL then, yes.

10-00:32:38

Graff: PCL. Yeah, he was Claire's deputy when the administration started. And Bill Press was director of OPR. I think that's the way it was. Or maybe he was director of PCL. He must've been director of PCL before he went into the Brown administration as director of OPR, Office of Planning and Research. And I think I was on the PCL board because of Bill.

Lage: I see. So you were on the board.

10-00:33:16

Graff: Yeah. Yeah, that becomes relevant in a minute. Well, it became relevant then, but we'll talk about it in a minute. Anyway, Larry stayed with Huey briefly when Huey came on, and then he left and Kirk replaced him.

Lage: And Larry had also been involved with the Sierra Club, had been a staffer at the Sierra Club.

10-00:33:41

Graff: Well, is that right before and—

Lage: Unless it was later. I think it was before, but—

10-00:33:49

Graff: Yeah, could be. And then he fled to the North Coast. Fled is probably not quite a fair word, but he had had enough of the political stuff. He stayed active, I think on the Smith River Alliance or something like that. I really don't know what he did up there. Anyway, so there's tussling over the legislation. One of the scary things, from the point of view of those of us who thought the package was inadequate, was that Peter Behr embraced it originally, as a state senator. And then he started to get major pressure from his constituents, against it, which I'm sure Jared Huffman currently is well aware of on the modern version, as they have their hearings in Sacramento this week. Anyway, I remember writing letters to Peter. And he and I had one

drive, I think, from Fresno to the Bay Area together, where I lobbied him heavily on the canal. I don't take credit for him changing his mind, but he did ultimately change his mind. Meanwhile, on the environmental side, the club and PCL were supporters. And both then came under heavy pressure from within their own organizations to change. Within the Sierra Club, the real leader, in my mind, was a young attorney named Nick Arguimbau. Do you know that name?

Lage: Yes, I do.

10-00:35:39

Graff: Okay. Nick and his wife, Martha Ture, T-U-R-E, became big-time agitators in the club, and they filed petitions—which was a rare thing in the club—nationally, national petitions, to get the club to change its position on the peripheral canal.

Lage: Yeah, that was a *big*, big issue.

10-00:36:03

Graff: Right. And the leadership—by then, Carl Pope was big in the leadership, and he was very close to John Zierold—really didn't want the turmoil. I don't know what his personal position was, but he clearly didn't like all this agitation. But finally, a sufficient number of signatures were gathered, and they had to put it on the ballot. And I thought they behaved very sensibly and responsibly. They put to vote a bifurcated ballot. You know about this?

Lage: I do, yeah.

10-00:36:51

Graff: I don't know if your readers, if anyone happens to come upon this—this should be available to the readers [Graff's argument against the peripheral canal in the Sierra magazine—William Futrell was head of the club at that time. And I'll show you this.

Lage: And he was from the South.

10-00:37:28

Graff: Right. Anyway, they bifurcated the vote. You read the ballot, there're two things that members could vote on. One was whether the national club should decide this issue.

Lage: Because the national board was trying to stay out of state issues.

10-00:37:48

Graff: Because they were hoping that even those who were— The natural inclination of a Sierra Club member in Michigan or New York or Texas or wherever, when asked, do you want to build a big water project, would've been no. But when asked, should we be involving ourselves in a regional issue or a state

issue in California, some of those who would've voted no would say, nah, probably not.

Lage: So you think that was a political—

10-00:38:24

Graff: Oh, I know it was a political decision.

Lage: —decision, not an internal order issue.

10-00:38:31

Graff: It had internal order justification. But I know that many of our opponents of the canal thought it was a put-up job to confuse things.

Lage: Yeah, yeah, I can see that.

10-00:38:47

Graff: And as it turned out, the vote was, it's a state issue and we're against the canal. [they laugh]

Lage: Which is—

10-00:38:56

Graff: Which was internally contradictory. But the leadership of the club got smart, and by 1979, when the second round of legislation was under consideration, the club became opponents. And they had—

Lage: To John Zierold's discomfort.

10-00:39:14

Graff: Right. But the legislation changed and the political circumstances changed. One of the big arguments I made here—you'll see that it was Larry Moss for the bill and me against [in the Sierra magazine]—was that the Carter administration had emerged as an opponent of water projects in '77. And one of the arguments was, hey, this is undercutting a national effort to reduce reliance on dams and big infrastructure and emphasize conservation and the like. And Leo McCarthy, the thing he hung his hat on in the legislative fights was conservation. So Jerry, with my help and others' help, drafted some pretty onerous conservation provisions saying, you can only have the canal if you do this, this and this, which did cause some discomfort, at best, among the proponents of the canal. And I can't remember the circumstances. I'm sure others have testified to this and you probably can find it in the archives. The bill failed in '78.

Lage: We're talking about the first bill, SB 346?

10-00:40:37

Graff: The first bill, SB 346. And then it was reintroduced as SB 200 the next session.

Lage: With fewer environmental constraints the second time?

10-00:40:50

Graff: I think the way the proponents of the time would've described— Oh, by the way, the wild rivers come into this, too.

Lage: Right.

10-00:41:04

Graff: Which is where Kirk's narrative will help me in describing what happened. The two big kind of—what's the right word?—incentives is the less formal word, for environmentalists to support the peripheral canal measure, was that it was linked to an initiative that was placed on the, I think November '80 ballot, to make permanent state wild and scenic river protection. But that proposition was—there's legislative terminology for this—it was joined by— Basically, it said if the canal doesn't pass, then the state wild and scenic protection doesn't kick in. And that might've been jointly done. I think it was if the wild rivers don't get protected, then the canal authorization is invalid. So that was—

Lage: This was really intricate coordination—

10-00:42:32

Graff: Oh, *big* politics.

Lage: —with the legislature and the initiative process.

10-00:42:34

Graff: Right. But the effort was to diminish— on the one hand, win environmental support for Prop 8—I think it was Prop 8, on the November '80 ballot. But it was also a way to get the water interests to support wild and scenic rivers, because they were going to get their canal. Anyway, in the middle of all this—I can't remember the timing, and Kirk couldn't either—Howard Berman, who was the sidekick of Henry Waxman, but then still—he was then number two. I don't know what the title was, but majority whip, I think.

Lage: In the legislature?

10-00:43:25

Graff: In the state assembly. Berman decided to challenge Leo McCarthy within the Democrat party, for the speakership.

Lage: And do you know the politics there?

10-00:43:40

Graff: Well, I remember one event, which was cited a lot and I think has weight. But I went to a political event in Los Angeles where Leo McCarthy was the principal speaker. I don't remember what it was for. I don't know if it was a political event, an environmental event. Anyway, he committed the cardinal

sin of not recognizing his colleagues at the event. And that was cited as, Leo's lost touch with who his real constituency is. Maybe it was he was running for governor or— He was starting to think about running for governor in 1982, when Brown's term would be up. Anyway, for good or bad reasons, Berman decided to challenge McCarthy. And it was very divisive within the Democrat ranks, both in and out of the legislature. As I recall, Mike Gage got in the middle of that and was the last legislator to declare. It was basically a tie vote. And the Central Valley legislators, who were pro-canal, sided with Berman. In those kinds of internecine legislative battles, substance is frequently not what determines that issue. It's personalities and who's going to raise the most money and who would be the best leader, et cetera. Anyway, out of all that turmoil, eventually, Willie Brown emerged as the speaker [in 1980].

Lage: [laughs] Oh, so Berman was the—

10-00:45:47

Graff: Berman never became speaker. And the key swing vote, or swing votes, were Mike Gage, and later, Tom Hannigan, from the district up in Solano and Yolo Counties. And Tom Hannigan much later became Gray Davis's director of water resources, after he left the legislature. And both of those guys were honorable, good people.

Lage: And what was their position?

10-00:46:23

Graff: Well, they tried to make peace. And eventually—I don't remember all the sequence—the decision was made, let's get somebody new. And of course, then Willie had to rely on Republicans at one point. To remain speaker, he cut some deal because he didn't have all the Democrats lined up. But then he remained speaker for years, which contributed to the term limits problem we now have. Anyway, so back to the water side of this. I became very active in the campaign. Well, so the bill finally passes.

Lage: SB 200.

10-00:47:07

Graff: 200 passes. And Prop 9 is put on the ballot. And one of the things that the Brown administration did— And I want to talk some about other issues where the state and federal governments were intertwined, at some point, which relate to the canal. The canal was the big public issue. But the Brown administration got Cecil Andrus to agree, as a parallel to putting the state issue on the ballot, to consider federalization of the state wild and scenic designation for the four rivers, the Eel, the Smith, the Trinity, I think, and the lower American, which was kind of an odd wild and scenic; it's more a recreational river, really. But they were the package.

Lage: Do you think this was Jerry Meral—

10-00:48:11

Graff: Jerry was very heavily involved. But Huey and Kirk were very involved in this. And I'll get to some of that later. And as I remembered, and Kirk agreed, there was a fair amount of dissent within the Brown administration on the canal.

Lage: By that time?

10-00:48:35

Graff: By that time. By 1980.

Lage: And who were the dissenters?

10-00:48:39

Graff: Well, Huey, for one; probably most importantly. Sym Van derRyn for another. But another interesting thing. Brown, by then, had cooled off on his embrace of the canal. He was running for president. He was worried about the environmentalists, and he knew the aggies were never going to really support him. So he's off in Wisconsin with Francis Ford Coppola, doing that crazy thing, while this thing is coming to a head in the state legislature. And basically, he hands off to Gray Davis, his then chief of staff, the responsibility for dealing with the bill. And that meant both getting the bill passed, but also—

Lage: The horse trading.

10-00:49:38

Graff: —the details, right. And I think— I don't know this, but on a personality level, at least, Huey and Gray are not a good match.

Lage: I can imagine they'd be opposites.

10-00:49:59

Graff: So there's a lot of infighting going on. And I don't know if Bill Press was still there, but Bill would not have been for the canal either, as a former Behr aid and so on. Anyway, the one interesting thing about this, unbeknownst to me— and I don't know who he said it to, and I don't even know if it's true—but in a later profile of me done by Alice Kahn— Have you read that?

Lage: Yeah. Yeah, you gave that—

10-00:50:31

Graff: Where Gray Davis is quoted as saying we were doing just fine until Tom Graff started spreading his venom around. [laughs] Gray Davis and I have not ever had the greatest of relationships.

Lage: Now, tell me more about that quote. You don't seem, and later descriptions of you don't—

10-00:50:57

Graff: As spreading venom around, no.

Lage: Yeah. Did you behave differently at that time? Or is it just point of view?

10-00:51:04

Graff: I think it's Gray's point of view. Gray doesn't like to be crossed. But who knows? Who knows why he thought that? And he never said anything like that to me. It's just like Bill Gianelli saying to his colleague in DC, "I had one of those guys [Lage laughs] nipping at my heels." I should give you—I'll find that letter.

Lage: Did you come up with the term, "a loaded gun pointed at the North Coast?"

10-00:51:39

Graff: North Coast. I would love to claim credit for that, but I don't know is the answer. I asked Nick Arguimbau that recently, also in preparation for these interviews. And he takes less credit than I give him, and his then wife Martha, for stirring up people at the club. He had another name that he said had the idea first for a referendum. By the way, the referendum leaders, the formal signers, were Sonny McPeak and Lorell Long.

Lage: Oh, the referendum in '82, you mean? Or the club referendum?

10-00:52:18

Graff: No, the referendum in '82.

Lage: Sonny McPeak, oh.

10-00:52:24

Graff: And that's an interesting story.

Lage: Well, tell about how the referendum—

10-00:52:28

Graff: Well, one of the sub-interesting things is after my marriage broke up and before I met Sharona, one of the women I saw was Lorell Long. And we had a good time together.

Lage: What was her last name? I don't know.

10-00:52:45

Graff: Long, L-O-N-G. And she was the real grassroots person and did a lot of the motivating of smaller environmental groups, particularly in the Sacramento area and Sierra.

Lage: To come out in opposition—

10-00:53:02

Graff: Well, to the referendum, to come to vote against the referendum. What was I going to say? So Brown is still thinking veto, according to Kirk and others at the time.

Lage: Veto of?

10-00:53:32

Graff: The bill in '80.

Lage: SB 200?

10-00:53:35

Graff: Yeah, yeah. That was not public, but—

Lage: Even though he'd supported the whole enterprise for all those years.

10-00:53:42

Graff: Yeah, but as the presidential election was coming down—that was going to be in November—I think that was a factor. He's not just a policy guy, he's a political person. But anyway, he signed the bill so whatever he was thinking, that's what he did. And interestingly—and I always had to ask Kirk about this, and he credited Jerry Meral more than Huey and himself but—I got called after the referendum was in progress; I don't know that it had been already qualified, but it was well known that the effort was underway—I was called by Kirk, I think; it might've been Huey, but I think it was Kirk. Would I be interested in an appointment to the Colorado River board of California? Helen Burke, who's a long-time Sierra Club activist in the East Bay, and who, after Jean Siri, had been the second woman ever elected to the East Bay MUD board of directors, had gotten tired of flying down to Southern California monthly for Colorado River board meetings, so she wanted to step down. And so they asked me if I would replace her.

The way the board was constructed, there was basically one public appointee. It was kind of a hodge-podge board. It was people recommended by the six agencies in Southern California with interests in the river, a representative who would represent the Indian tribes on the river, and a third person with knowledge of Colorado River board issues, and a public member. And so I was the public member. And I served on that board from '81 to '83, all the time that I was campaigning against the peripheral canal.

Lage: That's very interesting, that they separated those two.

10-00:56:18

Graff: Well, I always semi-seriously, thought that the more I was visible as an opponent, the more likely it was—it was a pleasure appointment, it was not a term appointment—that they would remove me. And I asked Kirk, how come it was that they didn't? And I assumed that Kirk and Huey protected me. But he said that Jerry was more active, was more verbal in saying, no, once you're

appointed, you act down there as you see fit. And one of my big, my most public kind of writing—there were a lot of debates and stuff like that, but—was an *L.A. Times*—

Lage: About the peripheral canal.

10-00:57:19

Graff: Well, it was not directly about the peripheral canal, but readers could see it as [they laugh] being a statement on the peripheral canal. Have I given you this?

Lage: I think you have. Yeah, yeah, yeah.

10-00:57:41

Graff: Yeah. Metropolitan [Water District] was our big bogey man opponent, particularly because we had a couple of the big ag firms on our side.

Lage: We have to talk about that, as we get into it. That's important.

10-00:57:58

Graff: [over Lage] Yeah, well, we'll get to that. Well, in fact, there's a little bit of going backwards there, but we should do that. That piece was written as a sort of— Well, the foil for that piece was the political advertising that Met was doing, which it— They couldn't legally, themselves, play—

Lage: Oppose—

10-00:58:34

Graff: Oppose the referendum or support the referendum. It's always weird because the vote is yes, from their point of view.

Lage: The referendum recalled what?

10-00:58:43

Graff: The referendum brings the legislation to the voter.

Lage: It wasn't a recall, it was—

10-00:58:49

Graff: No, it's a referendum. A referendum basically, the voters were doing what legislators do, voting yea or nay.

Lage: But they'd already voted SB 200 and it had been signed.

10-00:58:58

Graff: Well, but SB 200 was on the ballot.

Lage: And then they put it on the ballot?

10-00:59:04

Graff: Well, the way a referendum works is that after the legislature votes—and this is much more common when the legislature is a city council or a board of supervisors—the very ordinance or bill that the political entity passes is then put before the voters. And a yes vote confirms the bill and a no vote overturns the bill.

Lage: Okay. So it was not *required*, surely; but they wanted that protection, to have the—

10-00:59:38

Graff: Oh, no, the legislature didn't want it. You had to gather—

Lage: Oh, okay. It's a very odd thing.

10-00:59:45

Graff: Well, it was the first statewide referendum since 1955. And one of the reasons I think it succeeded—

Lage: So you had to vote no to be against the canal.

10-00:59:57

Graff: Correct. And one of the reasons that— It was a brilliant stroke by the canal opponents, to put it on the ballot. And it was not anticipated by the proponents of the canal when they were passing the bill. So I believe on the substance, forgetting for the moment the way the political stars lined up, on the substance, to pass the bill and to win votes, Brown and Ayala and I think by then it was [John] Thurman, kind of dangled goodies on the bill. So they added a big dam in the valley, and they put on a lot of other sort of Christmas tree ornaments.

Lage: There was Los Vaqueros Dam, or was that in the original, 346? And Glenn Reservoir in Glenn County.

10-01:01:10

Graff: Glenn, right.

Lage: And Cottonwood Creek Project in Shasta.

10-01:01:16

Graff: Right. And—

Lage: And those were expensive—

10-01:01:20

Graff: That's absolutely right. And so when the campaign happened, which they didn't anticipate, two key things occurred. One is we fleshed out the overall cost of the package. By the way, this is relevant to this week's discussions in Sacramento. A bill to authorize a canal requires only a majority vote. A bond

to pay for a canal and other things, dams, requires a vote of the people. And they didn't want to put before the people a vote. I'm not sure when it's a two-thirds vote or when it's just a majority vote of the people, but they definitely didn't want— And they had no idea that their bill would go before the voters of California. And so then once the referendum qualified, two big things happened that helped us at the polls substantively. Well, three things. One is we got Ron Robie—to his everlasting credit, even though he was our opponent—to estimate the cost of the total package, which at the time, was \$20 billion. And that's a lot of money.

Lage: It was more then.

10-01:02:49

Graff: It was more then. And then secondly, in kind of a brilliant political move that was, I believe, mostly or entirely financed by Boswell and Salyer, the two agbiz firms, they created out of whole cloth, a task force, of whom Mike Curb, who was one of the Republican gubernatorial nominees, was chair; and of whom John Garamendi, one of the Democratic gubernatorial candidates, was vice chair; but most importantly of whom, A. Alan Post, the just retired legislative analyst, was executive director—I think that was his title. They created a task force to look at the costs of the package, basically. And Alan Post had a lot of respect, unlike Curb, and even unlike Garamendi at the time. So we worked closely with him to produce what were, I thought, very fair analyses of the financing behind the canal package.

Lage: Including these dams that—

10-01:04:13

Graff: Including the dams.

Lage: Now, Robie, in his oral history, says that they were in there but they weren't going to be done until needed. So maybe he wouldn't have included the cost of those.

10-01:04:25

Graff: Probably wouldn't have. I'm sure DWR [Department of Water Resources] testified. And I don't remember the details. The task force report is publicly available. But it was certainly used by opponents to discredit the bill. And the campaign mantra, south of the Tehachapis, was it cost too much. And we certainly cited both the Curb taskforce and Robie's own estimates.

Lage: Now, two questions. Were you involved at all in the idea for, or the early days of getting the referendum—

10-01:05:01

Graff: Well, I was not active. And in fact, I was originally skeptical because the original referendum proponents were in the delta, were the delta farmers. And Sonny McPeak and Lorell Long. And it took a while.

Lage: Because they were the ones who were really worried that they were going to be cut out of the water supply, right?

10-01:05:22

Graff: Right, right.

Lage: Or have to pay for water that had been free.

10-01:05:25

Graff: And I remember my political judgment originally was that they didn't have the heft to really contest a statewide referendum. And it was well into the signature gathering phase, and maybe even— yeah, I don't know when it was, exactly, when Boswell and Salyer made the decision to embrace the referendum and finance it.

Lage: Now, do you know how that came about? Or were you involved in that?

10-01:05:55

Graff: The story I heard was that Tom Zuckerman, who is one of the two kind of public leaders, or was one of the two public leaders of the delta farming interests, went to them and persuaded them to sign up.

Lage: And wasn't their opposition based on the fact that it was tied to protecting the North Coast rivers?

10-01:06:22

Graff: Well, no. Arguably, the other way around, because if— By then Prop 8 had passed. And with the demise of the canal bill, that election was voided.

Lage: But they were *glad* to have that voided, because they didn't want the—

10-01:06:44

Graff: Yeah, yes.

Lage: —North Coast rivers protected.

10-01:06:47

Graff: Arguably. So that might've been part of what was going on. But it never became a big issue in the campaign.

Lage: It was all about the cost.

10-01:06:58

Graff: And meanwhile—this is part of maybe why Gianelli didn't like what I was doing— Going back to the wild and scenic rivers story, Prop 8, I think it was, passed in November. But meanwhile, the federalization issue was pending in Washington. And there was a frenzied effort to complete an environmental impact statement on federalization before the Carter administration left, particularly after Carter lost. And so Kirk and Huey and a woman named Vera Marcus, one of the first African Americans that I knew of who was really

active in a major environmental issue, were lobbying heavily in Washington to get the EIS done in time for Andrus to certify it and create federal protection. And Kirk, by the way, credited Brian O'Neill, who had no direct authority over water because he was—I don't know what—Golden Gate National Recreation Area at the time, but influential with Andrus. And as were others, like Guy Martin and Dan Beard.

Lage: So they all got involved in this California issue.

10-01:08:31

Graff: They all got involved. And they had two months left. And Carter was going out so they had freedom to do what they pleased, pretty much. I can't put myself in their place. Maybe if Carter had ordered them not to do it, they would've obeyed orders, so to speak. But I think that was the last thing on his mind. However, a couple interesting things Kirk told me. One was that Pillsbury, Madison and Sutro, which represented the forestry interests, was camped out in Chief Justice Rehnquist's chambers, outer office, to get him to sign a temporary restraining order against Andrus' signing of the federal wild and scenic river protection. But that on the very last day, on January 20, which is inauguration day—which I always know because it's also my birthday—Andrus was the last Carter appointee to resign his office. Carter had told all his appointees to resign on January 19, and Andrus disobeyed that order. And literally, on January 20, someone representing him—I imagine it wasn't him personally—walked over the signed papers to the federal register, certifying the environmental impact statement. And according to Kirk—and I had not known this story until a few days ago—the only reason the TRO wasn't signed was that Rehnquist had left the chambers to get dressed to administer the oath of office—

Lage: [laughs] Oh, no!

10-01:10:36

Graff: —to Ronald Reagan.

Lage: So the restraining order had to be signed—

10-01:10:40

Graff: Signed by the chief justice. And the reason for that is that the District Court and the Court of Appeals had declined to sign a TRO. And then once the thing was in place, it was too late. They'd filed suit, as did the water interests. And one of the things we did was we intervened as defenders of the wild and scenic rivers, even though at least theoretically, the federal and state governments were defending those rivers. And then eventually, both of them dropped out and we became the principal defendants.

Lage: Defender of that Andrus action.

10-01:11:26

Graff: Of that action.

Lage: And it held.

10-01:11:29

Graff: And it held. So that was—

Lage: I wonder if there were other issues like this, handled in the same way. It seems strange that this, kind of a California issue, would be so strongly represented in the Andrus—

10-01:11:46

Graff: Well, it is traditional, and has been the case in every transition I've seen since—I don't know about Reagan to Bush, but certainly, from Democrat to Republican, Republican to Democrat—for there to be a lot of actions taken between election day and inauguration day, by the outgoing administration, trying to lock in as much of their ideology in a range of issues, not just environment. But Bush did that, Bush II.

Lage: Oh, sure.

10-01:12:20

Graff: On wilderness designations. And my good friend Tom Jensen, who we'll come to later, as Bill Bradley's chief of staff— or not chief of staff, legislative aide for water and environmental issues. Later was in the Clinton administration and was responsible, or one of the people responsible, for Clinton's wilderness designations at the end of his administration.

Lage: Yeah. Well, it is a standard thing.

10-01:12:52

Graff: Right. So that was the wild and scenic side of water issues at the time. Excuse me, can we break for a minute?

Lage: Sure. [comments between them]

10-01:16:01

Graff: So Boswell and Salyer, we left that hanging a little bit.

Lage: Yeah. I want to hear more about whether you worked with them, how you worked with them, and how you started working with them.

10-01:16:11

Graff: I don't precisely remember that. I'm 90 percent sure that it was after the referendum qualified. And neither I nor EDF— Well, I wasn't involved in the signature gathering, let's put it that way.

Lage: You were not.

10-01:16:41

Graff: I was not. I don't know how that really came together and who was responsible for it, how difficult it was and so on. Well, like I said, I think my initial reaction was skeptical, because I thought even if they could qualify, they would be outmanned—and out-womaned, I guess—in the actual election. Although there's not that much to lose; all you do is revert back to what's status quo anyway.

Lage: Yeah. But you thought the farming interests were strong enough? Because ag, mainly, and urban water districts, in the south at least, were for it.

10-01:17:42

Graff: Right. What was his name? I only knew the Salyer representative from meetings.

Lage: Let's see if I have his name.

10-01:17:57

Graff: I want to say Ben was his name, or something like that. But I got to know Jim Fisher a little bit. Jim Fisher was, I think, the only non-Boswell to be president of the J.G. Boswell Corporation. The old man, who was somewhat of an environmentalist—he was on the Nature Conservancy board—

Lage: Oh, interesting.

10-01:18:22

Graff: —for some years; I think he was active in the Channel Islands Nature Conservancy interests. And Steve McCormick, who for a while was California TNC [The Nature Conservancy] head, then became national TNC head, was close to Boswell, Sr. So he had some environmental sympathies. I don't think that they interfered much with his business interests. [Lage laughs] But he retired once, and Fisher became president. And during the time Fisher was president was when there were two Republican conservative state senators who resolutely opposed the canal in the legislature, from Southern California, from Orange County. One of them was the infamous [John] Briggs, of the Briggs Initiative. And I don't remember the other one.

Lage: And why did they oppose?

10-01:19:27

Graff: Well, the theory was that Boswell helped them out.

Lage: Oh, I see.

10-01:19:35

Graff: Exactly how much above board or below board, I don't know. It was not in my interest to find out. [Lage chuckles] Anyway, I don't remember the exact evolution of this, but a steering committee was formed to promote the No on [Proposition] 13, I guess it was. I don't remember the number. I should

remember the number, but I don't. I think it was 9 [Proposition 9, 1982]. And I'm a little fuzzy what the first couple of meetings were like.

Lage: But you were on that committee.

10-01:20:31

Graff: Yeah. By then, I was quite familiar both with Zuckerman and {O'Maleenie?}, the Delta farmer representatives, and Sonny, and of course, Lorell.

Lage: Right.

10-01:20:43

Graff: So they wanted some card-carrying environmentalists on the steering committee, and I was— The other one I remember having a big role was Mike Storper of Friends of the Earth—

Lage: Oh, yes.

10-01:20:57

Graff: —who was also a Cal professor or assistant professor in the geography department. And he eventually moved to UCLA, which is where he is now. And Mike was a terrific guy and a serious scholar, and did a lot of the sort of substantive work that helped offset the DWR, MWD sort of army of experts. Another guy, wrote a book at that time on the peripheral canal, was named Harry Dennis. And I only learned much later on that his father was an investor and is a very close friend of George Miller's, of Cal and water fame, whom George has, over the years, tried to interest in water matters, and did from time to time, I think both father and son did from time to time contribute. But I think it's not directly the father's main interest. So neither on these general water issues or more specifically—later, we'll talk about Hetch Hetchy—neither EDF or George were able to persuade Reid Dennis to make major contributions.

Lage: The Farm Bureau Federation was also against it? That's what my notes—

10-01:23:04

Graff: I don't think so.

Lage: No?

10-01:23:07

Graff: Maybe. Well, there was a lawsuit that was described as a slapp suit—you know what a slapp suit is—filed against Boswell and Salyer by other growers in Kern County. One I remember is named Thomson. I think that might've been the main plaintiff. Anyway, Jason Peltier, who rose to prominence as an aid to S.I. Hayakawa—who was a senator in those years—and later went into both the Reagan-Bush and Bush II administrations in interior, was active with the Thomson group. He's from Kern County.

Lage: Now, they were in favor of the canal, that group?

10-01:24:07

Graff: They were in favor of the canal.

Lage: Boswell and Salyer were also Kern County, weren't they?

10-01:24:12

Graff: Kern and Tulare.

Lage: Now, why did they see their interests differently?

10-01:24:17

Graff: Well, that's been a puzzle for three decades.

Lage: [laughs] You don't have answer from having all those meetings?

10-01:24:28

Graff: I know what they said publicly and privately. The libel suit, basically, that— Well, I guess the libel suit was— There were competing op-eds in the *Bakersfield Californian*—I believe it was the *Bakersfield Californian*—by I think it was Jim Fisher or somebody representing the Boswell and Salyer forces, and someone representing the Thomson forces. And I was always puzzled why the Thomson people were—they didn't have Boswell's clout, but they weren't exactly dirt farmers or Okies—why they claimed that a suit that Boswell filed against them for libel was a slapp suit. But Boswell did file a libel action against their opponents in Kern County.

Lage: Over something they had said about—

10-01:25:37

Graff: Over what was said, I think it was in that *Bakersfield Californian* piece. And I don't know what was alleged to be libelous. But the reason I'm kind of more familiar with that suit, which we'd had nothing to do with, was that a former EDF staffer in our Colorado office had become a professor at the University of Denver law school. And his specialty was slap suits. And so they hired him. The Thomson crowd hired him to make the argument, or to help them make the argument, that it was a slapp suit and they should get extra money.

Lage: Did they win that argument? And a slapp suit is kind of a nuisance suit, right?

10-01:26:28

Graff: Nuisance suit, right. And if you can prove that it's a nuisance suit, you get more money. So the idea of it is to help the little guy filing suit against the big corporation, and saying that you've been wrongly accused or denied some rightful benefit. I guess, that you've been sued inappropriately. Because it has to have been a slapp suit against the little guy. And that's the response is, this is a slapp suit and we should get extra damages that way.

Lage: But we still haven't addressed why Salyer and Boswell, from the same area, saw their interests differently from the other ag interests.

10-01:27:30

Graff: What they said in public was that the environmental constraints were too great. But they focused on the specific language around the delta. And I don't remember the details of the final bill, but I think the reason that Robie and Meral and Brown and others thought that the constraints were sufficient was that they delegated to I think the state board, but I wouldn't swear to that, authority to limit— to do good things by the bay and delta. But what those were— My theory—

Lage: You thought they weren't strong enough.

10-01:28:26

Graff: Strong enough.

Lage: And Boswell and Salyer are saying they were too strong.

10-01:28:29

Graff: They were too strong. And we laid aside those differences.

Lage: How did that work, to lay aside those really kind of core differences? Is that difficult to—

10-01:28:39

Graff: It was not difficult, not for me personally. The issue was, does Prop 9 pass or does it fail? What I insisted on, to go on the referendum steering committee, was that we—we, I, EDF—would have veto power over anything that was published in the name of the anti-9—

Lage: The official committee.

10-01:29:13

Graff: Yeah. And also to have a hand in deciding who the campaign consultants would be.

Lage: And how did that work out? Because your campaign consultants—

10-01:29:23

Graff: Were Republicans.

Lage: —was a big conservative Republican. Russo, Watts.

10-01:29:30

Graff: Russo, Watts; ultimately, Russo, Watts & Rollins. Rollins is the famous one. But in state circles there, well, Russo was well known. Watts was a guy—

Lage: Oh, it's two people, not—

10-01:29:44

Graff: Two people.

Lage: —somebody's name.

10-01:29:45

Graff: Two people. Russo-comma. And I remain friends with all of them. I never knew Rollins. I think he came in after '82. But I became friends with Watts, who I thought was a brilliant political operative. And the campaign theme they chose in the south— They looked at the numbers and basically, what they saw was environmental messages. And, the south is taking our water would resonate in the north. And, it costs too much would resonate in the south. And that was acceptable to me; I thought it cost too much, too.

Lage: Right. And you were into the economic analysis of—

10-01:30:37

Graff: Analysis anyway. So I never really had an issue with what—

Lage: They didn't attack the environmental constraints.

10-01:30:44

Graff: No. When asked personally, Fisher in particular, and John Penn, I think the guy's name was, from Salyer-- There's a guy named John Penn Carter, who has been general counsel of the Imperial Irrigation District, so I'd have to look in the clips, what the name of the Salyer guy was [John Penn Lee]. But in local papers, they certainly said, we think the environmental constraints are too onerous. And if you look at the election returns, the further south you went in the valley, the more the vote turned in favor of Prop 9 and less against. Although I think it was still a majority, even as far as Kern. But the further north you went, even in ag country, it was more, the south is taking our water.

Lage: Right. [laughs]

10-01:31:45

Graff: And the political element here is that if you just have a list of descriptions of people, and you say farmers, you say environmentalists, and you say bureaucrats, bureaucrats come in last.

Lage: In terms of popular—

10-01:32:08

Graff: People's preferences, popularity.

Lage: Oh, interesting.

10-01:32:11

Graff: And people like farmers; people like environmentalists, not quite as much. That was true then; it's probably still true. People like Dan Walters and others

talk a lot about the unholy alliance against the canal; but it was not in their interests to do that, because if you told people that both farmers and environmentalists were against it, they would like at least one, and sometimes both of those.

Lage: But only *some* farmers. The delta farmers and these two Kern County—

10-01:32:50

Graff: Well, but that's too subtle. The average voter doesn't know the difference between delta farmers and Boswell—which is a problem for us on other issues. It's hard to run an anti-ag campaign in California, even though in numerical terms, in the San Joaquin Valley, Imperial Valley, Sacramento Valley—Salinas Valley is where a lot of the money is because they're growing high value crops—in numerical terms, they are 20 percent of the vote.

Lage: But people like farmers, yeah.

10-01:33:37

Graff: They like farmers. And currently, Devin Nunes, congressman from the Kern to Fresno area, is making great hay attacking the feds and Nancy Pelosi for protecting endangered species and shorting the farmers, the real farmers being 600 growers in the Westlands Water District.

Lage: So that continues.

10-01:34:12

Graff: Yeah, yeah.

Lage: Now, somewhere I read that Northern California corporations who were against the peripheral canal were afraid to come out and say it.

10-01:34:23

Graff: Well, some of them. It depended. PG&E, for example— I know that Bart Shackelford, with whom we were doing battle on electricity issues, he loved our water marketing work and supported it—rhetorically, at least; I don't think financially—for years thereafter. The other guy who was huge on that issue on our side was Ted Wellman, who was Marin Conservation League and a big Standard Oil, Chevron executive. In fact, I don't know if he was ever indicted, but he was certainly cited in an antitrust suit that the feds filed against the oil companies in, I don't know, the fifties. So he understood markets, [laughs] and how to game them, too. But PG&E, I know stayed neutral because their service area ran all the way down to probably Bakersfield. The dividing line between PG&E and Edison is somewhere around Kern County.

Lage: It was *really* a hot issue. This just shows how—

10-01:35:45

Graff:

Oh, yeah. And one of the things that this did personally for me—and I credit Doug Watts for this—is recognizing that we would be attacked in Southern California as this unholy alliance, he looked over the landscape of the environmentalists who were part of the No on 9 Coalition, and decided that I was the most buttoned down. And so when we paid our visits as a coalition, on the conservative editorial boards of Southern California, I was the one that got in the room. *San Diego Union*, *Orange County Register* and others.

Lage:

Now, why were you perceived as the most buttoned down, when we've just been talking about you as a guerrilla fighter and—

10-01:36:43

Graff:

Is Obama a centrist or is he a liberal? People have different perceptions. But there were certainly activists who were also active within the referendum group, who were a lot more strident than I was.

Lage:

Yeah. And you had the economics focus, also, you could talk on.

10-01:37:04

Graff:

Economics focus, yeah. Well, in the planning and conservation— By the way, these titles are always the newspapers' titles. There is reference to voluntary transfers, but that really emerged the next year, '83, with the defeat both of the referendum and then of the citizen environmental initiative in November, which Hap Dunning was the main proponent.

Lage:

Now, shall we move on to that? Do you think we've covered the waterfront with the peripheral canal.

10-01:37:43

Graff:

Let me just go through my notes.

Lage:

Just two things that come to mind. One was, what happened to your relationship with Jerry Meral?

10-01:37:50

Graff:

It was strained over the years, and resumed as a friendly relationship over Hetch Hetchy, where we're on the same side.

Lage:

But it must've cost him a lot, somehow, to come out of the environmental movement and all this work you'd done with rivers, and then—

10-01:38:11

Graff:

Well, but originally he had Zierold and Moss and others.

Lage:

But then slowly, this support fell off. Did he stay strong in favor of this—

10-01:38:20

Graff:

Well, he became head of PCL.

Lage: How much later, though?

10-01:38:24

Graff: Not much later. After '82, when the administration closed up. I think he was there by '83 or '84.

Lage: But he stayed in favor of the peripheral canal?

10-01:38:36

Graff: He personally always stayed in favor of the canal. But what I was told by others who were on the PCL board— The PCL board sort of changed its structure over time, the way PCL sustained itself. And I might say, we haven't talked about Ralph Nader. I want to tell about Ralph Nader. Jerry was more of the Ralph Nader philosophy of environmentalism. This may not be for here.

Lage: Of enemies and good guys?

10-01:39:11

Graff: Well, as that and what's important to the grassroots. And I don't know this lasted over the years, but I know in the early years, he paid his staff very little—which was a Nader trademark. He expected young people to come in, work for a few years and then move on. There're very few Naderites who ended up making good livings or—

Lage: He probably thinks that's dangerous.

10-01:39:47

Graff: Right. Possibly. Anyway, but what I heard was—and I heard this from Bob Rabb, I'm sure, who was a rabid anti-canal person from Marin County, but a PG&E employee—that the deal the board made with Jerry initially was that they would not go there, that Jerry would not lead, would not bring the peripheral canal issue up again. And that was actually easier in the Deukmejian years because Deukmejian was, among others, advised by Doug Watts, even though in the—

Lage: He ran his campaign, I think.

10-01:40:36

Graff: Ran his campaign against Bradley, eventually. But he came in late on that; that was after the referendum was over. And there's a funny Doug Watts story. When Deukmejian was elected, I was still on the Colorado River board and it was a pleasure appointment. So I went to the January meeting, I went to the February meeting, I went to the March meeting, I went to the April meeting. And '83 was the big flood year, when Glen Canyon Dam almost went and when the houseboats on the lower river were flooded.

Lage: I'd forgotten that.

10-01:41:22

Graff: And I was raising Cain on the board. How come these people weren't protected and weren't given proper notice? Da-da-da-da. And I was driving Myron Holburt who was the executive officer of the board, crazy that I was making all this trouble. And so Doug Watts told me later that Myron was badgering the governor's office—

Lage: [chuckles] Get rid of this guy.

10-01:41:52

Graff: —on a daily basis, get rid of Graff. [they laugh] And sure enough, before the May board meeting, when the flood issues were at their peak, I got a call the night before, from Doug—which was a generous thing to have happen—saying, “Tom, I hope you won't take this personally, but your services are no longer required.”

Lage: [laughs] Interesting.

10-01:42:21

Graff: And I decided to go quietly. He had a perfect right to remove me from the board. But in subsequent years, Watts left the political consulting world and moved to New York City, took on {Lucy Kiekovich?}, who was a Jerry Brown political person, and they ran kind of an ad firm in New York. And I think he takes credit—or at least some people give him credit—for the “it's morning in America” Ronald Reagan slogan—

Lage: Oh, really?

10-01:43:06

Graff: —for the reelection campaign in '84. And then I think he married a woman of significant means, and became kind of less of a— enjoyed life more.

Lage: Worked less.

10-01:43:23

Graff: Worked less.

Lage: Is there a story to how you brought around— Again, going back a little bit. Somewhere in my notes, I have noted that you convinced PCL, Planning and Conservation League, to change its position, along with Sierra Club. Who was on the board at that time? And who was the director?

10-01:43:45

Graff: At that time, the board was a more conventional board of notable environmentalists, much like the League of Conservation Voters is now. And there was a lot of unhappiness that PCL had endorsed the canal. And I don't remember who the ringleader was, but I was certainly among them.

Lage: And you were on the board.

10-01:44:13

Graff:

I was on the board. And we had a vote at a board meeting shortly after July of '77. And basically, there were two arguments for sustaining what Larry Moss had done. One was that he did the right thing; and the other was that once an executive director has spoken, you can't undermine him. And I'm convinced that the majority, which was a very small majority—the numbers thirteen to eleven stick in my mind, but that could be wrong—voted to uphold the decision. But it fractured the board. And many of the important members on the board, like David Brower, were on the no side. What then happened was the battle shifted to the actual legislation. And I don't recall when PCL switched, but I think it was after the club.

Lage:

So they must've had another vote later.

10-01:45:32

Graff:

Well, I left the board at about that time, during that time. I didn't resign in protest, but I was pretty—I thought they'd done the wrong thing, both on a substantive level and on a procedural level. Larry never consulted the board until afterwards. And unlike—well, I don't know what Zierold did in the club, how much the higher ups of the club at that time knew. But I was just a lowly member of the club; at PCL, I was on the board. And I certainly got no wind—

Lage:

{inaudible}

10-01:46:19

Graff:

I was personally resentful, I think, of both Jerry and Larry, for having been excluded from the discussions. So I figured, I don't need this. I didn't make a fuss, but I just left. And so I don't know the details of how the league changed positions. And there were intertwined directorates. A lot of the PCL people were people like Rich Wilson and Alf Heller, people who were with California Tomorrow. And I can't recall how they voted, but it was all very unseemly, from sort of an elitist environmentalist point of view. And so I think Larry just lost his cred, basically. The vote was to support him, but it really wasn't.

Lage:

[chuckles] Yeah, yeah.

10-01:47:41

Graff:

And so when circumstances changed—the language of the legislation, the lineup; Peter Behr switched—it was no longer tenable for PCL to be the outlier. And unlike the current circumstance, where TNC has staked out a pro-canal position—

Lage:

The Nature Conservancy.

10-01:48:07

Graff:

Nature Conservancy and Natural Heritage Institute and PPIC.

Lage: And you had mentioned in one of our early meetings, that you were leaning in that direction.

10-01:48:17

Graff: Well, I would say I indicated a willingness to listen. And my exit interview can be read. Probably by the time anybody actually reads this or listens to it, I'll have shown my hand.

Lage: [laughs] Well, what is different? Do you look back at that proposal of—

10-01:48:47

Graff: Well, two things are different, very notable. Well, one is the same but— What's it been? Thirty years has passed. The earthquake risk is more visible; [Hurricane] Katrina happened.

Lage: The potential disaster in the delta—

10-01:49:06

Graff: Disaster in the delta is more real than I think I gave it credit for at the time.

Lage: Which really I don't think was brought up much at that point, was it?

10-01:49:13

Graff: It was brought up, but it was not a big deal. It's interesting. We had a party in our backyard, kind of a going away party for Rebecca. One of her very good friends' boyfriend is starting a water-based PhD at Cal, and he was there and he was kind of— We were talking about the canal and about his interests in water and so on. And one of his professors as an undergrad was Ray Seed, who's one of the big geologists saying, that's a precarious situation out there. And he's on the Delta Vision Task Force, which has now changed its name. And he's supported by PPIC, as is Jeff Mount.

Lage: Another professor.

10-01:50:09

Graff: Another professor, at Davis. They make a major point of this and it's hard to argue against them. Tom Zuckerman still holds out, saying it's an overblown risk. I don't think there are actually known— What do you call them? Whatever causes quakes.

Lage: Seismic faults.

10-01:50:45

Graff: Faults, faults, faults. I don't think the claim is that there're actually faults in the delta, or major ones, but there's the Hayward and the Calaveras and the San Andreas and others.

Lage: And an earthquake on those would mean disrupting the levees?

10-01:51:01

Graff: Right, right.

Lage: And then there'd be no way of conveying water?

10-01:51:05

Graff: Moving the water. Or you'd have to wait till the fresh water outflow was sufficient to reach the pumps, or else you'd be pumping salt.

Lage: I see.

10-01:51:18

Graff: But the big thing that's changed is climate and sea level rise, actual and projected, which will make the levees even more vulnerable.

Lage: And maybe the need for water greater? Or is that not—

10-01:51:39

Graff: Well, I don't really think so. It's interesting, the original PPIC report took the the-levee-fails-and-no-canal alternative seriously. And there is a lot of capacity to make urban water use in the Bay Area and south of the Tehachapis more efficient. If you look at Israel, for example, it's *way* more efficient than the US.

Lage: In terms of people saving, or infrastructure?

10-01:52:27

Graff: Well, both. But even there, there's a lot that can be done. And then within agriculture, you have these Upland districts and East Valley districts that have huge water supplies. And there's a lot of room for trading within agriculture. But it's six-million acre feet per year—

Lage: Six-million acre feet?

10-01:53:04

Graff: That are exported from the delta.

Lage: I see.

10-01:53:08

Graff: And the original number was— at that time, it was 5.3. Expected demand was 8.4. And could possibly be as high as 10 or as low as 6.2. That's my increase diversions. By the way, I should say that I was careful personally, in the first canal debate, not to make it a peripheral canal debate. Although I have to concede that Mr. Watts and company were not as careful as I was.

Lage: So how do you make it not a peripheral canal debate?

10-01:54:04

Graff: Well, increase diversions. I don't know if I ever completed the DEAC story. When DEAC finally endorsed the canal, the vote was twelve to one.

Lage: Right. We didn't get that on the record. And you were the only dissenter.

10-01:54:20

Graff: And I was the only dissenter. And my basis for dissent was that the deal they cut did not include delta export limits.

Lage: I see. That's right. You mentioned that.

10-01:54:31

Graff: And so I hung my hat on that. And I *still* hang my hat on that.

Lage: That if there's a peripheral canal but one that has export limits—

10-01:54:38

Graff: There have to be export limits.

Lage: To save environmental uses of water.

10-01:54:42

Graff: To save the estuary. Right, right. Now, it gets complicated without a canal because you're dealing with a completely different ecosystem. And Peter Moyle is the real expert on this, and Tina Swanson is the environmental community's expert on it, who heads the Bay Institute now. A really good person. Peter's a good person, too. They basically don't know. It'd be a completely different—

Lage: They don't know what the end result would be of having—

10-01:55:15

Graff: Well, water flows would be very different. The original idea, in '80, was that there would be— What do you call them?

Lage: Releases, scheduled releases.

10-01:55:29

Graff: Releases from the canal. I haven't heard that discussed recently. But they were worried about dead-end sloughs. And I don't know if they've solved that problem. But the dead-end sloughs were also— the farmers were worried about that because they get salt water. Whether that has adverse ecological consequences wasn't clear. But they also worried about if there was access to the canal by fish, then they would get stuck in the canal. And they'd go upriver and then they couldn't get out. But I haven't kept up with the details of the ecological issues. I've got to believe that we've learned something in thirty years about how to handle some of those issues. But I still think quantity matters. And that's just a gut feeling. I shouldn't say *just* a gut feeling, but—

Lage: I feel that a lot of people wouldn't have been satisfied just to have limits imposed, because they'd say that doesn't hold ten years from now or twenty years from now. If you make the capacity large enough, eventually they're going to use that big a capacity.

10-01:56:53

Graff: Right, right. Well, that's going to be true this time, too. It *could* be true.

Lage: They don't have to make the capacity that huge, I suppose.

10-01:57:01

Graff: That's correct. And the same argument will take place over that—well, among environmentalists—that actually, how you would structure delta export limits, if you believed in the institutions, you would say, move more water in wet periods, in wet years, and less in dry periods, in dry years. On the other hand, from the water users' perspective, it's the opposite.

Lage: They need it the dry—

10-01:57:34

Graff: Right.

Lage: So that leads you to storage.

10-01:57:39

Graff: Yeah. Well, there is a lot of storage, is the point, particularly underground. And a lot of what we've been writing about recently, particularly Spreck Rosekrans, who didn't join us until '89, and he's now the senior staffer in our San Francisco office, at twenty years. He writes a lot about storage and knows a lot about—

Lage: Groundwater storage.

10-01:58:02

Graff: Groundwater particularly, yeah. But there have been dams built, which you'd never know if you listened to Schwarzenegger or Devin Nunes. There's a big one in Southern California, Diamond Valley off-stream. And there's Los Vaqueros, the small version, but it's an off-stream dam. So some dams have been built.

Lage: Off-stream dam simply means it's—

10-01:58:28

Graff: It's on a little stream—

Lage: —pumped away.

10-01:58:30

Graff: —but you pump water up into it.

Lage: Rather than blocking a stream, well, a major river.

10-01:58:35

Graff: You can't have a dam that doesn't block a stream of some sort. So off-stream is a little bit of a misnomer, but it means it's not a major stream. And the main way it's beneficial to a water system is you pump water into it when it's wet and you take water out when it's dry.

Lage: But it does have a lot of energy costs.

10-01:59:00

Graff: It does. It has net energy costs. Depends on the size of the dam, size of the lift. But the dams that were in the '80 package were stupid, and the dams that are being talked about in the '09 package are equally stupid. [they laugh]

Lage: Oh, really?

10-01:59:27

Graff: They're just different. From a financial point of view; forget about the environmental point of view. Off-stream storage is less damaging overall than on-stream. If you love the valley behind Glenn Reservoir, then for ecological or emotional or recreational reasons, you'd be opposed to the dam. But that's a small subset of those who have legitimate reasons to be against those dams. They're just economically dumb.

Lage: And the ones being proposed today are similarly—

10-02:00:15

Graff: Yeah. Yeah, well, Friant is one of the ones that's proposed, and that's on-stream. But it's blocked, a river that's blocked downstream. And it's interesting, Nunes is making a big point of, how come environmentalists aren't consistent on the Tuolumne, where there're downstream dams, in terms of salmon recovery? And to which we respond, we are consistent. [Lage laughs] Although you can't have salmon above Don Pedro, either. So ultimately, you'd have to remove Don Pedro, which even the Hetch Hetchy advocates are not recommending.

Lage: The Hetch Hetchy—

10-02:00:58

Graff: Valley advocates.

Lage: The PPIC report gets so much— It seems to figure so strongly in this. Was legislation in the works, and then PPIC did an analysis? Or were they involved in the—

10-02:01:21

Graff: Well, I don't know the ins and outs of that. PPIC is supported by the Hewlett and Packard Foundations. And more recently, by others; the Moore

Foundation, I think. I don't know whether the academics from Davis, who are personally proponents of the canal—like Jeff Mount and Peter Moyle, Jay Lund—and yet who have significant environmental sympathies, went to the foundations and the foundations went along or decided to pony up. [Mark] Baldessare and [David] Lyon— Lyon, I guess is the guy who's really close to Hewlett. He's the big head of the Hewlett Foundation. I don't know whether he was persuaded by corporate people in Silicon Valley or Hewletts were persuaded. I don't know the ins and outs of that. I don't question at all the bona fides of the academics involved.

Lage: Well, they do have a good reputation for fair and—

10-02:02:56

Graff: Generally, right. Jay Lund worked closely with us, and so did Howitt, behind the scenes, on Hetch Hetchy. And Lester Snow worked with us on Hetch Hetchy.

Lage: We have to get to Hetch Hetchy, but later.

10-02:03:13

Graff: So people overdo the conspiracy theories. I do think that for whatever set of reasons—and they're complex; maybe we'll get to this later, as I talk about my evolution at EDF—we became less popular as a fundee, as a grantee of those big foundations down there, for water work. So I don't know how all the evolution went. Whereas Nature Conservancy developed their water program, and resources legacy fund and resources law group became much more the favorite sons and daughters of the Hewlett and Packard funding.

Lage: But you don't know the story behind that?

10-02:04:19

Graff: Well, I know some of the stories behind that. [Lage chuckles] a key figure is Michael Mantell, who was deputy resources secretary under Wilson.

Lage: He was Doug Wheeler's—

10-02:04:35

Graff: He was Doug Wheeler's number two. And eventually, Doug became a big backer of our Hetch Hetchy work.

Lage: Oh, yeah.

10-02:04:45

Graff: And he and Huey co-signed the forward to the study, the big study we did. So there's a lot of crisscross of who's with whom and what— Anyway.

Lage: Do you know the work of the Pacific Institute? They do a lot of water—

10-02:05:04

Graff: Yeah. Peter Gleick, right.

Lage: What is their—

10-02:05:06

Graff: Well, Peter built that institution on his own. And he's a very dynamic individual.

Lage: An academic?

10-02:05:21

Graff: Well, he's a product of the Berkeley system, but if he's an academic it's as an adjunct kind of fellow. And he's evolved somewhat; he was more— Well, I don't know what's fair to say. He's kept more of his grassroots cred than I would've expected from an academic. And so far, he's been a peripheral canal skeptic. We'll see. And he doesn't lobby directly.

Lage: It's more of a research institute.

10-02:06:07

Graff: Research institute. But he also believes in applied research, so he's involved in the issues of the day; more so than many academics, but not more so than, at this point, the PPIC folks. And in fact, there's an academic squabble going on currently between Howitt, of the PPIC crowd, and a guy named Michael, at University of Pacific, and Peter, on the economic effects of water cutbacks in the San Joaquin Valley, where both Peter—

Lage: Cutbacks to ag?

10-02:06:49

Graff: To ag. Well, particularly to Westside ag. And I think Rich Howitt kind of— I don't know the details, but I'm picking up the vibe that Rich regrets some of the stuff he's put out. He and Lund have what's the accepted working model on water and economics in California. And Michael and Gleick have criticized some of Howitt's applications, at least as they affect employment.

Lage: This all gets very complicated.

10-02:07:40

Graff: Oh, yeah. Well, this is not a simple subject.

Lage: No. And the EDF as an organization, it's not a research organization, but you do research, right?

10-02:07:50

Graff: We do some research, yeah. Well, I'll tell you story ahead of time, but remind me to give you more details. We did a movie called *Discover Hetch Hetchy*,

and we got Harrison Ford to be the on-camera narrator. And then more recently, we've deemphasized Hetch Hetchy as an issue. We, I say— EDF.

Lage: Is this since you left?

10-02:08:29

Graff: No, no, it's before I left. And that's an interesting evolution, about which I'll talk later.

Lage: Right. We have to go into that as a whole issue.

10-02:07:39

Graff: Right. That's related to my status at EDF. But unbeknownst to me—at least for a while; I was sick and so on—EDF decided not to promote the movie. Well, not to promote the movie, I think is fair to say. We went to a couple of film festivals early on, but then sort of stopped promoting the movie. So Spreck Rosekrans, my colleague—was also on the RHH [Restore Hetch Hetchy] board; was for a time, chair—had the idea—which I, in retrospect, think was absolutely brilliant—to ask EDF whether it would agree, essentially, to give rights to Restore Hetch Hetchy, to promote the movie. You can go on YouTube and watch it. And he got permission internally, to do that. [phone rings; he answers]

Lage: We're going on long. Are you okay?

10-02:10:05

Graff: I'm hanging in.

Lage: Okay. We should end shortly.

10-02:10:07

Graff: So he got EDF to approve the movie, and EDF set two conditions. One of them had to do with Restore Hetch Hetchy and what it would and wouldn't do; and the other, that we had to get Harrison Ford's permission. And Restore Hetch Hetchy went to get Harrison Ford's permission, and he said— Well, *he* didn't say, his aide said that he had picked up that EDF wasn't as active and so he didn't feel right about continuing to give permission.

Lage: Oh!

10-02:11:00

Graff: So this was fairly recently, a few months ago. So since I left, that issue— RHH had changed executive directors. New executive director, Mike Marshall, whom I like and respect a lot, called me up and said, "Are you willing to write Harrison Ford a letter asking him to reconsider?" And I said, "Sure. I don't know if he'll pay attention, but I don't think there's any reason he should be embarrassed by this. It's a great cause." So Mike drafted a letter, I substantially edited it, and we sent it off. And lo and behold, he changed his mind and approved his image being used, continuing to be used, with the

other conditions attached, as well. So I don't know. This could become relevant soon. Once the Ken Burns series starts to run on PBS, there's going to be a lot more interest in films related to the national parks. So we'll see what happens.

Lage: Interesting. Well, we have to talk about that as a whole. Do you think we've covered peripheral canal sufficiently, and next time we could start with where that led, with water?

10-02:12:45

Graff: Yeah. Oh, one loose end—which we could start with next time, because there's some stories attached, related to state/federal relations—is drainage in the Westside San Joaquin Valley. It's a big water issue.

Lage: And does that relate to peripheral canal, or just the next step?

10-02:13:10

Graff: Well, it relates to the relationship I had with the federal water officials.

Lage: Okay. So state/fed issues is a—

10-02:13:24

Graff: Right. Although I think we can skip over a lot of the eighties, other than getting into the water marketing stuff. Drainage is the one exception. I was going to say earlier— Are we still on the record?

Lage: Yeah. Should I—

10-02:13:42

Graff: Yes, good. No. Maybe we'll finish with this. That Deukmejian decided that the peripheral canal was something he couldn't advocate. And so he came up with an alternative, to go through the delta, which Phil Eisenberg dubbed Duke's Ditch. And Phil then later became the Delta Vision chairman. Anyway, Doug Watts briefly was a staffer in the Deukmejian administration. And one of his assignments was to try to promote Duke's Ditch. So we interacted on that. But one of the ways that Jerry Meral and I sort of did maintain somewhat cordial relationships in the eighties was that we both opposed Duke's Ditch. And that led to some frictions with the delta farmers, who were big proponents of Duke's Ditch.

Lage: Ah. So Duke's Ditch didn't go around the delta, but went through it.

10-02:14:54

Graff: It went through the delta. So they could keep their fresh water. And Sonny McPeak was always ambivalent on Duke's Ditch. Well, in the eighties. We can talk about that separately. But depending on what the proposal is, the lineups change.

Lage: Right. Well, that's the reality of the political world.

10-02:15:19

Graff:

But the environmental community, with the exception of the commercial fishermen, were anti-Duke's Ditch. Zeke Grader, who loves to critique EDF's market-oriented programs, both on the water side and on the oceans side, was a proponent of Duke's Ditch, which I occasionally am inclined to remind him of, when he gets too out there in opposition to our corporate sellout.

Lage:

Okay, that's enough because we're going to exhaust you.

10-02:16:04

Graff:

That's enough. And we'll do drainage next time.

Lage:

Yeah. Okay.

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 Begin Audiofile 11 09-02-2009.mp3

Lage: Okay, we're back on, and today is September 3, 2009. And this is our eighth session with Tom Graff, if I've counted correctly.

11-00:00:10

Graff: Today's the second.

Lage: Oh, it's September second, I'm sorry. Okay. Now, I think we've covered pretty well the peripheral canal, and if we missed something, we can pick it up later.

11-00:00:24

Graff: We'll catch it up, yeah.

Lage: You did not elaborate too much on something you said earlier, that the peripheral canal was kind of where the idea of collaboration with divergent groups took hold. You talked about working with what appeared to be an enemy [chuckles] from the south, from the farming—

11-00:00:48

Graff: Well, I probably pushed the envelope on that concept of when the time is appropriate and the issues are okay to work with people who are normally adversaries, or more frequently adversaries. And we certainly did that on the peripheral canal. There's a wonderful video that I have of Pat Brown, many years later, complaining about that alliance. It was a serendipitous event, where he was the luncheon speaker and I was on a panel just before lunch. And I talked about it. So that sort of jogged his memory, and then he got on his high horse and complained that that was the only reason the peripheral canal failed in the '82 election.

Lage: It's interesting, the consummate politician himself [they laugh] complaining about that.

11-00:01:55

Graff: But it was a sweet moment, because you know how he is; he's always sort of saying how wonderful everybody is. And he says, "I've followed Tom Graff's career and I've been very impressed," and bomp! "He should never have aligned with those terrible growers.

Lage: Yeah. Now, we're going to talk about drainage issues today. And I see you allied once again with—

11-00:02:22

Graff: Oh, yes, several times.

Lage: —the, quote, "enemy—"

11-00:02:24

Graff: Enemy, right.

Lage: —on those issues.

11-00:02:26

Graff: Yeah, we'll get to that. Let me start back a little bit, though. Well, first of all, I want to mention really my last full-fledged lawsuit was against the federal government in the mid-seventies, on the San Felipe project. The San Felipe project was an effort by, principally, Silicon Valley, the Santa Clara Valley Water District, to get an extension— well, to get a canal built from the San Luis Reservoir, basically, to San Jose, driven across the mountains and north. And again, there were sort of some unusual allies in that case. We got as witnesses, both Harvey Banks and Ron Robie, who was director of water resources at the state level at the time. And Harvey was a consultant to the Contra Costa Water District.

The basic argument in the lawsuit, which was tried before Judge Weigel in the US District Court in San Francisco, was that the federal environmental impact statement did not adequately convey the threat to the delta, of adding another commitment of exports, which would've gone south and the north again. And Robie, from the point of view of the state project, and Banks from the point of view of the Contra Costa Water District, both had reasons to be skeptical that this would commit more water to the feds and less would be left over to others interested in delta water.

Lage: So you sued the feds—

11-00:04:18

Graff: We sued the feds.

Lage: —because they were going to sell the water from the Central Valley project.

11-00:04:21

Graff: Right, right. And the key issue, in terms of disclosure in the EIS, was would this be additional water? Which is what we claimed and Banks and Robie testified to. Or would it just substitute for water that was presently surplus within the federal system, going to Westlands, basically, that old San Luis unit?

Lage: The feds were saying water would be diminished to Westlands and—

11-00:04:57

Graff: Right. Which, of course, didn't happen. And Judge Weigel, I think, initially leaned our way. I can't remember the sequence in the lawsuit. But he eventually ruled against us. And Louise Renne, who you may have heard of— was city attorney under Dianne Feinstein later, in San Francisco—was the attorney for the state in that case.

Lage: So the state was on your side.

11-00:05:29

Graff: Was on our side, right.

Lage: It was a joint—

11-00:05:32

Graff: Joint effort. And there's a mention in David Roe's book, *Dynamos and Virgins*, where he says one of the reasons he decided EIS suits were no longer a good strategy was that Judge Weigel—for whom he had clerked and who was a pretty environmentally-minded liberal judge, even though he'd been appointed by Eisenhower—ruled against us.

Lage: On what basis? That it wasn't new water?

11-00:06:11

Graff: Well, there was enough disclosure. I don't remember the details. NEPA is just a disclosure statute. Anyway, my theory was that— The Carter hit list came out in early 1977, and if I recall correctly— I know Auburn Dam was on that list. It was like seven projects. And I just thought Weigel figured out if Carter wasn't going to declare this project a bonehead project, then he didn't want to interfere.

Lage: Oh, because Carter had a chance there to put it on his hit list.

11-00:07:26

Graff: Right, right. And of course, the hit list, which is a whole long story, which I had very little to do with, was largely put together by two staffers in the White House. One was Kathy Fletcher—

Lage: Who was previously with the—

11-00:07:40

Graff: Previously with the EDF, and whose mother and brother are both on the Ninth Circuit. Her mother is now senior. And the other was Joe Browder, who I mentioned in connection—

Lage: Another environmentalist.

11-00:07:52

Graff: Another environmentalist, who later turned on us in the Allen-Warner Valley case. So there's all these connections. Anyway, so that was going on. And it involved a lot of the issues of the Westside. So I was becoming familiar, between that and replacing Jerry Meral on DEAC—

Lage: So this went forth and the canal was built, or the conveyance system?

11-00:08:17

Graff: Oh, yeah. It's a major piece of Silicon Valley's water.

Lage: Now, do you think Silicon Valley would be a different place without that project?

11-00:08:30

Graff: Maybe we should save that. One of the big philosophical issues—Philosophical's a little too strong, as a word. One of the major issues in California is how crucial is water to urban areas?

Lage: To the growth and—

11-00:08:52

Graff: To growth. There's a wing of the environmental movement that thinks if you cut off water, you can cut off growth. And we've never really subscribed to that point of view.

Lage: At EDF.

11-00:09:06

Graff: Right. There's a lot of conservation and water management that can substitute for more water, if needed, to support an urban area. You don't need bluegrass lawns. That's the main one. There's a lot of technology that can substitute for water inside the home. Peter Gleick and the Pacific Institute have done a lot of work on that. So there obviously is a limit. But if you go to Israel, for example, there's a lot less water. They still support agriculture and the cities are not drying up and blowing away. They just have different lifestyle choices. Ultimately, there's a limit. But I don't think Silicon Valley would've hit it. And of course, price is a big factor, too. Water's still cheap, even in urban areas. And certainly cheap in most ag areas.

Lage: Okay. Well, we'll come back to that in the context of water transfer.

11-00:10:16

Graff: [over Lage] We'll come back to that, right.

Lage: I'm going to put this on hold for one second [pause in recording].

11-00:11:42

Graff: So that was the context. When I started really paying attention to drainage was about 1977. Carter had just been elected; Jerry Brown was governor. And they decided together to put together a task force [Special Task Force on the San Luis Drain]. And the politics of that were interesting, too because Miller had just started his second term. He'd been elected in '74, so he started in '75. Bernie [Bernice F.] Sisk, who was a quite senior Central Valley congressman at that time, was trying to get a bill passed—I don't remember the details—but to expand San Luis unit in the Westlands, basically.

Lage: And that was his area? He was out of Merced.

11-00:12:33

Graff: Yeah. Out of Fresno, Merced, yeah. I don't remember precisely. Tony Coelho was his principal staffer. And so Miller cut a deal with him that— He got some of what he wanted, in terms of Westlands expansion. And in exchange, this task force was formed and appointed by Brown and by Carter/Andrus. And they ended up publishing this special task force report, which is a fount of information, even now, thirty-two years later, or thirty-one years later. But the Westlands has managed to basically undermine the conclusions of the report. The picture of who was on that is kind of fun. Among others, Mr. John Garamendi as a youngster and Tony Klein. I don't know if you know that name.

Lage: Right. He was in the Brown—

11-00:13:49

Graff: The Brown administration. And that's Rose Ann Vuich, who was— there were a couple of ag representatives, Rose Ann and Adolph Moskovitz.

Lage: Now Vuich, wasn't she in the Jerry Brown administration?

11-00:14:02

Graff: She was a state senator from Kern County, I think.

Lage: Larry Moss.

11-00:14:07

Graff: Right.

Lage: You're not in here.

11-00:14:11

Graff: No, no, no, no. I have a couple stories about that. The one that I remember best—and I've sort of forgiven him—but when I testified to that task force when they were collecting information, John Garamendi was very rude.

Lage: In what way?

11-00:14:29

Graff: Well, essentially, he got on his high horse for agriculture. He was actually a delta guy. But he said, what did I have for breakfast that morning? Something like that. Anyway, so for a while there, I—

Lage: Well, what had been your testimony, that made him react like that?

11-00:14:55

Graff: If I could find it, I'd give it to you. But I don't think it was anything very exceptional. I think I just said, these guys are taking too much water; they're hurting the delta. Probably that simple.

Lage: Was the focus on drainage problems or—

11-00:15:14

Graff: Well, drainage was a big piece of this.

Lage: So the drainage problem had been known about for a long time.

11-00:15:20

Graff: Oh, yeah. Well, in fact, Paul Taylor, whom we talked about earlier but not on the record, was involved with that. And as my friend David Weiman pointed out recently, one of the key issues that the task force dealt with was— Well, there were several. There was, how much water should Westlands be entitled to? And there's a long and complicated history about the expansion of Westlands in the sixties to include an area called the west plains. If you go down to the valley, you think it's flat. If you really look carefully, there's a very shallow gradient that takes you from the coastal hills to the valley trough. And the water, amazingly enough, runs downhill.

Lage: Yeah. [laughs]

11-00:16:20

Graff: Except the money. And there was a lot of controversy within the Westlands in the sixties and early seventies, between—well, there are several controversies. But this was between the uphill new area, the west plains, and the downhill old area, which had a name, but I don't remember what it was. So there was that thing going on within the Westside. And it carried up north, too. And drainage was a big piece of that because—

Lage: That must've drained down to the trough, also.

11-00:16:52

Graff: —it carried the salts. And as it turned out—and we'll get to this—selenium was part of that. So drainage was an issue; relative water rights between the old area and the new area was an issue; and federal subsidies were an issue. And I think where Sisk's bill came in was he wanted to increase the subsidies by subsidizing the distribution systems and the drainage systems that were required to fill out the project, basically.

Lage: Was it called a subsidy, or just called federal project?

11-00:17:37

Graff: Oh, no; *I* call it a subsidy.

Lage: Okay. [they laugh] The feds finance it and the ag—

11-00:17:46

Graff: Ag supposedly repays it. And there's a lot of controversy.

Lage: Well, how do they repay it? By the charge on water?

11-00:17:51

Graff: Well, yeah, by charges on water. But there're a couple major exceptions. One, interest is free. So you're getting an interest-free mortgage. And then two and three and four and five. And by the way—you earlier asked me about acreage limitation—it was in those days, free to the first 160 acres. And then eventually, to the first 960 acres, in one of the reform deals that came down later.

Lage: The reforms in—

11-00:18:25

Graff: That came in, I think—

Lage: '82.

11-00:18:29

Graff: There was a bill in '82. And then it also was folded into CVPIA.

Lage: Oh, it was.

11-00:18:38

Graff: And we never made 160 acres a big issue, because if you're going to be for markets, it's hard at the same time, to say you're against— you're for subsidizing these people, but not those. We never opposed the acreage limitation, but we never made it an issue. NRDC did make it an issue. And that became, in time, one of the issues that separated us— [phone or doorbell rings, pause]

But one of the issues in the task force report is acreage limitation, also. And enforcement of it and scale of it. And that's an ongoing issue. And in fact, one related issue I want to talk about is the Pleasant Valley Water District fight, which is kind of a sidebar to the Westside bigger fight, where I later—

Lage: Now, where's the Pleasant Valley?

11-00:20:26

Graff: Pleasant Valley is Coalinga, basically, which now is a big prison. But it was primarily owned by Chevron. They own most, or maybe all of the land, because there was oil there, also. And in eighty— I don't know, I have to look it up; I have paperwork on this. Tony Coelho by then had replaced Bernie Sisk, and he and Alan Cranston cut a deal to bring the Pleasant Valley Water District into the CVP.

Lage: A lot of things get done by cutting deals, it sounds like.

11-00:21:09

Graff: That's the way of the world. I'm sure it's the way of other worlds; it's certainly the way of the water world. And George Miller chose that moment to kind of absent himself from the fray. But fortunately, Chet Pashayon, Charles

Pashayon, who was a Republican congressman from a district slightly south of Coelho's, didn't like the fact that Coelho was getting a deal for his constituents but they were cutting Pashayon out. And Ronald Reagan was president. So Pashayon decided that he would collaborate with EDF in stopping this deal. And the way they had set it up was that it would go on what's called a suspense calendar of the House of Representatives.

Lage: The way that Coelho and—

11-00:22:09

Graff: Yeah. And then Cranston would take care of the Senate. I think at that time, Hayakawa was the other senator. Or maybe Wilson was already a senator, I don't know. Anyway, so the way you defeat a bill on suspension is you needed twenty votes. But the fix was in, basically. And then we did basically one thing that turned it around overnight. And that was Ward Sinclair, who was a kind of muckraking reporter for the *Washington Post*, wrote a story, the basic upshot of which was Chevron is getting a big—

Lage: Subsidy. [laughs]

11-00:23:00

Graff: A big subsidy. Well, it wasn't quite accurate. Chevron was keeping the oil rights, but it had sold the land rights to supposedly—

Lage: And water rights.

11-00:23:13

Graff: —and water— Well, there wasn't—

Lage: Oh, they didn't *have* water.

11-00:23:16

Graff: Not much water.

Lage: Yeah. That's the point.

11-00:23:18

Graff: They had some. But this would've firmed up the supply. It wasn't a lot of water. Anyway, it appears in the *Washington Post* on a Friday or a Saturday; the vote was Monday or Tuesday. And the final vote was 420 against [chuckles] the deal. Because as soon as there were twenty—

Lage: Yeah. And here you have these two extremely powerful figures, Coelho and Cranston.

11-00:23:47

Graff: Yeah. But two things. One, Pashayon was appealing to the Republicans and to the administration. And once it became public, it was like—I don't want my—

Lage: Yeah. It had to be behind the scenes.

11-00:24:02

Graff: Right.

Lage: How did Ward Sinclair get onto it?

11-00:24:06

Graff: Well, I told him. [they laugh]

Lage: Oh, okay. That's what I wanted to get out there. You play the press.

11-00:24:13

Graff: Yes. And what's interesting, much later, in the— I guess it couldn't have been *that* much later. But Donald Hodel was secretary of the interior. And Tony Coelho was, of course, still a congressman. And I took Fred Krupp in to see Hodel, with whom I've later collaborated on Hetch Hetchy. And at the same time, I said to Fred, "Let me introduce you to Tony Coelho." Well, what was remarkable about that day was that Hodel was downright rude. He ushered Fred Krupp in the door, closed the door and said, "Mr. So-and-so," who was kind of a mid-level bureaucrat, "why don't you discuss the issues with him?"

Lage: Oh, wow.

11-00:25:19

Graff: And Coelho—and this was still pretty fresh, this Pleasant Valley thing— couldn't have been more sort of positive and, "Oh, Fred, Tom's a great guy," et cetera. [they laugh]

Lage: Now, did you know Coelho on other issues?

11-00:25:41

Graff: Well, we had other— Yeah. But I never worked with him closely. I guess maybe it was Hoover, which I want to talk about; that's a long story. But Hoover was issue where—

Lage: Hoover, did you say?

11-00:26:00

Graff: Hoover Dam. Well, I don't want to get into now. But the short version is it was one of the few issues where Northern California environmentalists—which basically meant me—were on the same side against Southern California. And so Coelho, working with Sala Burton, put together an amendment to protect Northern California's interest. And I helped them with that.

Lage: So that's what was more fresh in his mind.

11-00:26:31

Graff:

Right, I imagine. I think he's also just a canny politician. He's stretched the ethical limits a couple times, but— Anyway, it was a memorable day. On the very same day, I was kicked out of the room by someone who I would've expected to be, at the least, courteous, and who later, I did a deal with him; and someone who I had undermined his deal, and he was completely positive.

Anyway, getting back to drainage. So drainage is in the issues in the report. One of the other last major issues—and there are probably more that I'm missing—was that they wanted to get federal money for the distribution and drainage system. And I think what Miller did is he allowed an appropriation for a couple of years to go through, in exchange for getting a full report on what the circumstances were on the Westside.

Lage:

Is this the San Luis Drain that we're talking about?

11-00:27:49

Graff:

Yes. Well, yeah. And just to go back a little bit on the substance of the drainage issue, when the original San Luis Act was passed to build the San Luis unit—

Lage:

Of the CVP.

11-00:28:05

Graff:

Yeah, CVP. It was conceived of as a joint federal-state facility. And the California Aqueduct, which runs parallel to the San Luis Aqueduct as far as San Luis, also continued and delivered water to Westside farmers further south in the valley. As the state system was authorized in the Burns-Porter Act in '60, the aqueduct was authorized, as well as Oroville Dam and various other facilities. And a big argument, yes or no on the peripheral canal. Back to drainage. The San Luis Act provided for a joint federal federal-state deal to export drainage from the valley to the north, to the delta.

Lage:

And when was that?

11-00:29:27

Graff:

'56.

Lage:

Oh, way back in '56.

11-00:29:29

Graff:

'56. But it was only authorized if they could reach an agreement. And the state—and I can't remember when this happened; it's before my time—opted out of the deal, decided not to do the drainage deal. So it was left to the feds alone. And so they started planning the San Luis Drain, and built the drain as far north as Kesterson. And they built some of the local drainage facilities to hook into the drain.

Lage:

Which would be draining out of the farmers' fields.

11-00:30:19

Graff: Out of the farmers' fields. So the San Luis Drain was made operational, I think in about '83 or so. And within a very short period of time, it turned— They hadn't completed it to the delta. They had a holding area at Kesterson. And it was not very long— I don't remember when—

Lage: The dates that I cooked up here were the late seventies, they began to drain to drain the Westland wastewater.

11-00:30:56

Graff: To the drain.

Lage: Yeah.

11-00:30:59

Graff: The drain was built in the late seventies.

Lage: That's what I have here.

11-00:31:02

Graff: It could be.

Lage: Proposed and construction begun to drain Westland wastewater to the delta; but it was never completed. And then '83 was when they discovered—

11-00:31:10

Graff: The birds.

Lage: —the birds at Kesterson.

11-00:31:12

Graff: Right, right, right. And then some real heroes in the Fish and Wildlife Service, whose careers were adversely affected by their findings and the aggressiveness with which they promoted those findings. But—and this jumps ahead and there's other stuff I want to cover—that led to the kind of infamous hearing in 1985, over which Carol Hallett, who by then was deputy secretary of the interior, presided. In which she announced that the federal government would be closing Kesterson Reservoir, which really put the Westside farmers in a bind because they had to find some alternative of—

Lage: Because their land was—

11-00:32:17

Graff: Were going salt up. And they were also potentially liable for big fines under the Migratory Bird Treaty Act, which was the basis upon which the Interior Department, even Reagan's Interior Department, felt that they couldn't keep the reservoir open because of the birds that were dying. And what I remember about that hearing— It was in the county fairgrounds building. Big, cavernous building. The biggest building in Los Banos, which is now somewhat of a

Silicon Valley suburb, but was then— It's a long commute, even to the southern part of Silicon Valley, over the mountains. The same route as the San Felipe.

Lage: But people do commute from Los Banos?

11-00:33:07

Graff: Oh, yeah. And I haven't recently, but I'm sure the whole subprime mortgage thing has hit them hard because it's cheap housing. You pay in gasoline costs and you save on housing costs. Anyway, my main memory of that was that Hallett quickly—oh, two memories—turned over the proceedings to David Houston, who was the regional director of the bureau, to take the fire from the panicked farmers. And the other—those were the fairly early days of cell phones—was the big-shot growers leaving the hearing as soon as the announcement came, and calling their whatever—their real estate brokers or their brokers—and saying, "Sell," [Lage laughs] or whatever it is they say.

Anyway, it was great theater. But not a pleasant moment for the Westside. Anyway, so our response to that was anomalous among the environmental community. We proposed to the Westlands Water District that we jointly approach Congress to consider funding a research project on solutions to the drainage problem.

Lage: Now, tell me why you decided that. I've always heard of Westlands as being an area that farms crops that we don't really need, in an area where we shouldn't be farming, and maybe it'd be better to let them die.

11-00:34:55

Graff: Well, that's one of the left wing critiques of what we did then.

Lage: But is it true or not?

11-00:35:01

Graff: Well, yes and no. There are long answers to that.

Lage: Strongly stated, I know. [laughs]

11-00:35:11

Graff: Right. Well, no stronger than many have said. On the cotton subsidy, the Westlands argument in those days was, we grow—I can't remember which it is—we grow pima cotton, and the subsidies go to the other form of cotton, primarily. So the cotton subsidies were not as pronounced in California as they were and are in Louisiana and Mississippi, the Cotton Belt of the American South. One of the causes of the Civil War.

Lage: Right.

11-00:35:53

Graff: And they also always said, if you stop the subsidies in the South, we can compete in the North.

Lage: So they didn't feel dependent on cotton subsidies.

11-00:36:05

Graff: As much as the other cotton growers. Number two—and this evolved over the years—there's a lot less cotton grown on the Westside now than there used to be. They've gone over to processing tomatoes and to trees.

Lage: The almonds are there, too.

11-00:36:25

Graff: Almonds and other things. So that's the sort of agricultural side. As far as drainage is concerned, there's a debate on that. Zach Willey was our—sort of Zach and Terry Young were our experts. And their view, contrary to those who say you should just shut the whole area down, was that, yeah, you would end up with a trough that had excess salts and potentially, as it turned out, contaminants—particularly selenium, but potentially also boron and molybdenum.

Lage: Naturally occurring, but—

11-00:37:15

Graff: Naturally occurring. Which is another piece of the puzzle. If it had been pesticides that were applied, it would've had more resonance than the misfortune of having high selenium soils. Plus it wasn't just Westlands, it was the districts further north—Broadview and Panoche and parts of Firebaugh—

Lage: That had this problem with selenium and—

11-00:37:42

Graff: That had selenium. Okay, so—

Lage: So tell me. You were saying Zach Willey and Terry Young.

11-00:37:49

Graff: Yeah, they were developing sort of working on technical alternatives to handling the drainage problem. And we, in fact, published some materials on a very ambitious scheme that Zach and Terry came up with for combining reduction of salts, basically concentration of salts, and putting in solar panels that would generate electricity. And there's some of that going on in Israel again.

Lage: I was wondering, when you mentioned Israel, if you—

11-00:38:28

Graff: Yeah, yeah. So we were pretty serious about that. And so on the technical side, we were thinking we and Westlands could work together on figuring out technical solutions. It was not a policy piece.

Okay, so what was the upshot of the San Luis unit report? Basically, Miller, with the report in hand, said to Sisk in '78, the next cycle, "We've got to address the problems that the report has uncovered before we give you any more subsidies."

Lage: Any more water subsidies?

11-00:39:28

Graff: Water subsidies or—

Lage: Or a cotton subsidy?

11-00:39:30

Graff: Not cotton—that's the ag committee. Different—

Lage: [laughs] Okay. Water subsidy.

11-00:39:37

Graff: So that was being battled out. And Jerry Brown, with Tony Klein and John Garamendi among his appointees— Garamendi, by then, was in the legislature; was an ally of Miller's. Miller was close to Guy Martin, who was chair of the task force and so on.

Lage: So they have environmental sympathies, but also represent the delta farmers.

11-00:40:07

Graff: Right. Right. So I don't remember, again, all the details. 160 acre limitations involved, drainage is involved and so on. Presidential election comes up. And lo and behold, Carter starts to back down, during— Late in the campaign, Rosalynn Carter goes and does a fundraiser in Fresno.

Lage: Among the farmers.

11-00:40:39

Graff: Among the farmers. Suddenly Andrus and Martin and Dan Beard are cutting a deal with Westlands to renew their contract. Oh, the other issue I should've mentioned is contract renewal. I think that was the major thing, and it involved these other matters as subsidiary issues. So Andrus, late in 1980, as Carter's election is coming up, cuts this deal with Westlands—which is much more favorable to Westlands than is the report that his own staffers had promulgated just a year or two earlier—which we denounce. But more importantly—

Lage: You denounce the report?

11-00:41:27

Graff: No, the deal.

Lage: Oh, the deal, the deal that was more favorable to Westlands.

11-00:41:30

Graff: To Westlands. To this day, I don't understand why, but as it turned out pretty well for them in the long run, Westlands decides not to go through with the deal, either.

Lage: The deal to renew the contract?

11-00:41:47

Graff: Right. Thinking—this is after Reagan gets elected—they were going to get a better deal from Reagan. So now it's 1981. James Watt is interior secretary. And to the surprise of, certainly, me and others on the environmental side, he shuts off the water to Westlands, on the basis that they don't have a current contract. [Lage laughs] And basically says to them, you're getting away with murder in this contract that Andrus signed, and we have to renegotiate.

Lage: Do you know the back story there?

11-00:42:29

Graff: Well, one of the back stories that I've heard is that when Watt was a junior member of the Interior Department in the Nixon/Ford years, he had been treated badly by somebody at Westlands.

Lage: Now he had the power.

11-00:42:46

Graff: And now he had the power. [they laugh] He *thought* he had the power. Anyway, so we decided to intervene in the lawsuit on Watt's side. And this was, of course, controversial in the environmental community, because he was the devil.

Lage: Yeah. But you were intervening against Westlands, really.

11-00:43:07

Graff: Westlands, right.

Lage: At the same time that you're making the deal with Westlands—

11-00:43:11

Graff: No, this came later.

Lage: Later.

11-00:43:14

Graff: This was '81, basically, the Watt deal, the Watt lawsuit. Anyway, to Watt's discredit, the Justice Department and Westlands both opposed our

intervention. [they laugh] And in one of my last real legal arguments in front of Judge Price in Federal District Court in Fresno, I argued for intervention. And I think I had—

Lage: On what grounds, do you remember?

11-00:44:02

Graff: Well, it's legalese, but it was discretionary. We didn't have a financial stake in the litigation. If I recall correctly, the state did not also intervene, but they supported our intervention. I think Cliff Lee was the attorney. Excuse me, I'm going to get something else to drink.

Lage: Okay. Now we're back on. So you argued the case.

11-00:44:40

Graff: And I said they were looking at the task force report, all the stuff in there we testified, et cetera, on, and we can't count on the federal government to make all the arguments against the Westlands assertions. And we wanted to protect Kesterson. I don't remember all the details. But to my surprise—and this was fairly rare—Judge Price denied intervention. We took it up to the Ninth Circuit, and lost there, too. I don't want to get into the legal niceties, but I've been convinced ever since that had he let us in, all the history that followed would've been very different.

Lage: Oh. Well, tell me why. What was the result of that lawsuit where you—

11-00:45:35

Graff: Well, two or three years later, before Kesterson, Watt caved and cut a deal even more favorable to Westlands than Andrus had cut three or four years earlier.

Lage: Okay, that's interesting.

11-00:45:56

Graff: Basically, I think the lobbying and political clout that the Westlands growers exerted on both Congress and the Reagan administration overwhelmed Watt. And I think ultimately, if he had to choose sides between the farmers and the environmentalists—the alleged farmers, the growers—I've always tried to teach myself to call them growers rather than farmers.

Lage: Why is that preferred?

11-00:46:35

Graff: Well, in the peripheral canal campaign and in other campaigns since, farmers are popular; growers are neutral, in terms of political sort of—

Lage: Or industrial agriculturalists. [laughs]

11-00:46:53

Graff: Industrial agricultural is better, but that's the lobbyists. And the interesting thing, in terms of— The real industrial agriculturalists are Cargill and Monsanto and some others. And agriculture in the United States is unusual, in that by far the biggest financial sort of agricultural state is California, yet US agricultural policy is run out of the Midwest and the South. And California's an afterthought. And in fact, California's sort of progressive on some of the ag issues, on the subsidy issues, even though our senators vote with the bad side most of the time, Democrat or Republican.

Lage: Now, when you say the bad side, for agriculture?

11-00:47:56

Graff: For subsidies, basically.

Lage: But the subsidies aren't designed as much for California needs?

11-00:48:03

Graff: No. Well, that's correct. The big ones are rice and corn and wheat, soybeans. Cotton's a relatively minor player; sugar is a player. And then there's this whole separate dairy program. And so California has interests; but where California's agricultural sector is strongest, in terms of cash value, is with fruits and nuts and vegetables, not with the commodity crops. So that makes for another set of unusual political alliances. California's basically also, despite its very prosperous agriculture, an urban state. In fact, the West is more urban than the rest of the country.

Lage: Yeah. And do you know this figure? What percent of the state economy, gross state product, comes from agriculture?

11-00:49:19

Graff: Not very high. And particularly relative to the water use. A Silicon Valley chip compared to a cotton ball is infinitely more valuable. So if you're going to choose where to deliver water and there's a real crisis, you would definitely take care of your Silicon Valley business first.

Lage: You would, if you were not playing the politics of California, perhaps.

11-00:49:50

Graff: Right. But California's never really been water short, to the point where you had to make those kinds of choices in a real way. You've got a lot of lawns in Silicon Valley, too. Anyway, so where were we? So as a result—

Lage: Now, Westlands is getting its water.

11-00:50:14

Graff: Well, okay, so Westlands gets a renewed contract.

Lage: I don't think we finished the story of allying with Westlands on the research.

11-00:50:28
Graff: Yeah. No, now I'm going forward and we're—

Lage: Okay. Okay.

11-00:50:29
Graff: —back to '85. We do this deal. Congress—

Lage: You do the deal—

11-00:50:37
Graff: That's described in that article. ["San Joaquin Water Salvage Plan Pushed," *Los Angeles Times*, August 30, 1985] Congress passes the bill.

Lage: To give the research money.

11-00:50:44
Graff: Yes, which is astonishing in its own right. But how could they oppose it, basically? So what happens? The Bureau of Reclamation, true to form, blocks the deal, even after Congress approves it.

Lage: Blocks it by inaction, or by—

11-00:51:06
Graff: Inaction. Yeah, basically inaction.

Lage: Who was going to do the research? The bureau or an outside—

11-00:51:13
Graff: One of the things we decide, we wanted a direct appropriation.

Lage: To EDF.

11-00:51:21
Graff: To Westlands and EDF, jointly managed.

Lage: I see.

11-00:51:24
Graff: And we would basically hire the technical and scientific people to help us come up with solutions.

Lage: And that's the way it was written.

11-00:51:32
Graff: That's the way it was written.

Lage: Now, just to go back just a minute, here you had tried to intervene in this lawsuit against Westlands just a few years later. How did you approach them about this idea?

11-00:51:48

Graff:

Well, I don't remember the details. Jerry Butchert was the general manager at Westlands and a very nice guy. And I think I probably just called him up. They knew about our technical work on drainage that Zach Willey was doing. Zach basically comes from farm country. And Terry Young is an academic, or comes from an academic background, with a specialization in agricultural chemistry. So they knew we were, in good faith, looking for solutions. So I don't remember— I had a relationship with Jerry, but they basically heard us out and said, what do we have to lose? They were behind the eight ball. And we hired David Weiman, who was a long time thorn in Westlands' side, as a lobbyist in Washington. Had been a protégé of Paul Taylor's. Had gone to Washington in the early seventies. Originally worked for Gaylord Nelson, senator from Wisconsin, who was the principal author of NEPA, and evolved into one of the world's leading experts on the Westlands Water District.

Lage:

Nelson did, or—

11-00:53:11

Graff:

No. No, Weiman did. And they agreed to hire him as a lobbyist.

Lage:

For you—

11-00:53:17

Graff:

For this project, this joint project. And he similarly had some ties to some of the growers in Westland. And he was an early big proponent of the 160 acre limitation. Which, of course, Paul was. The liberal Rooseveltian conception of the Bureau of Reclamation was it was the champion of the small farmer.

Lage:

Right. And it was written that way, the original act.

11-00:53:52

Graff:

In theory. And Westlands, and San Luis unit, was supposedly the outlier, the one where the big farmers continued to flout the purpose of the act. So there's always been a tension among some of the real liberals that it's a Westlands problem, it's not a Reclamation problem. And to some degree, it's true. There hasn't been as much large farm development in the West elsewhere, as there was on the Westside.

Lage:

So when you say in the West, you mean in western US.

11-00:54:40

Graff:

Western US, the seventeen Reclamation states. And that also affects ag policy overall because— And also the big separate battles that went on between the bureau and the Corps of Engineers, which was a bureaucratic battle over who gets to build the facilities.

Lage:

Right. Now, did the bureau object to this because they weren't interested in Westlands or—? You said the bureau just kind of sidelined this whole thing.

11-00:55:14

Graff: Yes, basically, because they weren't in control. There's a modern analogy, a current analogy, which is that it's part of CVPIA originally, and then has embellished over the years. Title XVI of that act, the 1992 act, authorized the bureau to build wastewater reclamation projects. Or to build or to cost-share in building such facilities.

Lage: Which was—

11-00:55:51

Graff: One of the early sort of promoters of those projects was a guy named Rich [Richard] Atwater, who was a deputy assistant secretary of interior during the Reagan years. He ended up at various agencies in Southern California, where he's been trying to build wastewater reclamation projects. And again, the bureau has come up with every excuse they could think of to prevent—

Lage: They're not interested in wastewater reclamation.

11-00:56:29

Graff: No, they want to build dams, canals.

Lage: [chuckles] Yeah. So that's sort of the bureaucratic inertia or—

11-00:56:36

Graff: Right. And in fact, there's currently, just in the last week, Congresswoman Napolitano, who chairs the House subcommittee on water and power, wrote a blistering letter to the bureau saying, whatever happens at the state level, the federal level, on the delta—canal/no canal, whatever—that won't be in place for ten years or— I don't know what numbers she used. But you can build wastewater reclamation projects now, and it relieves pressure on the system. Why aren't you doing it?

Lage: Well, what *is* happening to the wastewater at Westlands now? The Kesterson is closed.

11-00:57:20

Graff: Okay, so essentially, what happened is that two deals were cut. One, that Westlands agreed to suspend deliveries to the San Luis Drain, and in theory, committed to handling drain water on its own. Oh, well, I should say— Okay. I guess it was originally the second Reagan administration, carrying over into the Bush administration, appointed another task force. This one was more technical. Well, they appointed a technical team to address the technical problems, basically, and to assess them. And then there was a public advisory committee appointed, on which I served, and on which Jean Auer served. And I want to get to Jean later on. She's one of my favorite people in this world—and what a world—and had been a State Water Resources Control Board member, appointed originally by Reagan, as governor, and later by Jerry Brown. Anyway, that program, San Joaquin Valley drainage program, headed

by a terrific guy named Ed Imhoff, produced this management plan for agricultural drainage. I'm sure you have that in your library.

Lage: This is 1990. Yeah. It's either here or in the water resources archive.¹

11-00:59:19

Graff: Right. One of the miracles of the modern world was that a diverse public advisory committee, chaired by Chet [Chester] McCorkle, who was a professor at UC Davis, and vice chaired by Jean, unanimously endorsed the report. Again, to the consternation of the bureau. And the big breakthrough on a technical level was that Ed, who was basically a US Geological Survey scientist, very bright guy, went along with this sort of ambiguous recommendation that, at least for the early years, you had to solve the problems in valley; that continuing to drain to the delta, which Miller had opposed and others in the delta opposed, was just not going to fly politically.

Lage: But what about ecologically? Did you have an opinion on whether that was—

11-01:00:35

Graff: Well, that's why we were so avid on trying to find alternative solutions. And the bureau continued to toy with dumping it in Monterey Bay instead. And Leon Panetta and others got wind of that, Sam Farr and so on, and they helped block that. So we were looking for alternatives, which is what's in there.

Lage: So this is a second report, which advocates some kind of a technical drainage area.

11-01:01:04

Graff: Right. Now, there's another irony here. Meanwhile, the National Academy of Sciences is doing a report on drainage, headed by Jan van Schilfgaarde, really able ag and drainage expert. And they're not blinded by the politics, arguably. And so they come up with that recommendation, you have to find an outlet or agriculture in the valley's going to die. At least Westside agriculture. And pollution's going to take place and so on. And then they and Ed had substantial differences about how he was writing this report, he and others. And guess what day the National Academy of Sciences report came out. The day before or the day of the Loma Prieta earthquake.

¹ *A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley: Final Report of the San Joaquin Valley Drainage Program*, US Dept of Interior and California Resources Agency, September 1990.

Lage: Oh! So it didn't get much attention.

11-01:02:15

Graff: Got almost no attention. If you look at the newspapers the day after the quake, you have to go to like page 50 to find a mention of this National Academy report.

Lage: Yeah. Were they focused on this area only? Or was it nationwide?

11-01:02:33

Graff: No, it was California.

Lage: But they talked about an outlet, rather than a reclamation.

11-01:02:43

Graff: Well, they covered the gamut.

Lage: Was it meant to find a solution?

11-01:02:47

Graff: Yeah. So I'm sure that report is available. But from a PR point of view, it never got— Basically, they had the right science, arguably, but there was not real constituency for their findings. I think the Westlands lukewarmly embraced them, but didn't ever believe that they could succeed—

Lage: In finding an outlet.

11-01:03:24

Graff: —in finding an outlet, right. And then, also the same time as all this is going on, NRDC is suing the bureau to prevent contract renewals from taking place.

Lage: Now, tell me a date again on this.

11-01:03:47

Graff: Well, I don't know when they started, but that's been ongoing for two decades, at least.

Lage: Okay. So they didn't want contract renewal based on this drainage problem?

11-01:03:57

Graff: Based on the whole gamut of problems, but based on the fact that the bureau wasn't recovering costs, even as required by law, much less as should've been required by economics. And then the other thing that's going on is Westlands turns around and sues the federal government, after it embraced the Rainbow report, and says, you owe us a drainage solution. And the environmentalists do intervene in that lawsuit—with NRDC taking the lead, but we were involved.

Lage: In the lawsuit against renewal of the contracts?

11-01:04:40

Graff: [over Lage] In the lawsuit by Westlands. No, we're not involved in that. But Westlands' lawsuit against the government to require a drainage solution to be implemented.

Lage: And both NRDC and EDF—

11-01:04:52

Graff: Yeah. I'm trying to remember how that worked. I guess we were— I don't know whether we're in the lawsuit or not, but we're certainly supporting NRDC's opposition. And we helped brainstorm. Particularly, Terry Young was basically the technical expert for the environmental defendants.

Lage: Now, what was their position, the environmental— In favor of Westlands or—

11-01:05:21

Graff: No, no, in favor of the feds.

Lage: In favor of the feds, that the feds didn't have to come up the solution.

11-01:05:25

Graff: The feds did *not* have to, yeah. Both on fiscal grounds and on legal grounds. There's no legal obligation to supply drainage in the San Luis Act and later statutes, because—and it's complicated—but because essentially, the federal government had spent all the money that was authorized in that act for drainage and distribution systems. And Miller had blocked additional funding, which is what Sisk had wanted, and so there was basically no money. As well as obscure authorization questions. All the issues in those reports come up. But to my surprise, and I think many others, Westlands prevailed in that lawsuit, originally in District Court and then more surprisingly, in the Ninth Circuit, by a two-to-one decision, in which the Ninth Circuit essentially said Congress owes Westlands a solution. Doesn't specify who's going to pay for it, doesn't specify what the solution is. And by the way, the San Luis Drain is authorized in the '56 statute.

Lage: Which was the solution, before it was found wanting.

11-01:07:01

Graff: [over Lage] Which was the solution, right. And the Ninth Circuit concedes, based on the reports, that if there's an alternative that works, the bureau could do that. But anyway, I can't remember when the Ninth Circuit decision was, but it's been a number of years. Went all the way back to the District Court. Judge Wanger, who's handled a lot of the other water cases, including the recent ESA cases, has been putting pressure on the bureau to come up with the solution. And he, of course, originally held that there had to be one, and the bureau's been dragging its feet.

Lage: It doesn't sound there really is a good solution easily tapped.

11-01:07:46

Graff: Right. That's correct. And of course, unsaid in anybody's opinion legally is who pays.

Lage: Well, isn't the implication that the feds have to pay, if they have to come up with the solution?

11-01:08:00

Graff: Well, you get into this very thorny real constitutional issue of can the courts require the federal government to appropriate money for something they think should happen, but Congress may not? And so no one wants to test that. Well, maybe Westlands does, but I don't think either the bureau or Congress wants to test that. I made the argument, in a paper I wrote, that no self-respecting Congress would allow a court to force it to spend money on something it didn't want to spend money on.

Lage: Well, what's the solution? Where does it stand right now?

11-01:08:48

Graff: Well, it stands, I think—

Lage: Just what you've described?

11-01:08:51

Graff: Senator Feinstein has been calling meetings for the last several years, to try and assist in forcing the parties together. And one of the arguments against her efforts has been this is getting in the way of the more important and more far-reaching efforts to solve delta problems.

Lage: But it is connected.

11-01:09:15

Graff: Oh, it is.

Lage: If the drain goes to the delta—

11-01:09:16

Graff: Yeah. But I went to Phil Eisenberg shortly after he started the Delta Vision Task Force, and said, "You've got to fold drainage in here." And he said, "I've got a big enough problem. [Lage laughs] I'm not touching drainage." So he didn't touch drainage. But I agree with your point.

Lage: Where's the selenium now?

11-01:09:40

Graff: Kesterson was cleaned up. That was agreed to by everybody. With a fairly high price tag, but manageable. And then the other big drainage piece—I don't know how much longer we have today, but—was the area north of Kesterson, which is the rest of the Westside, basically, which had some real

serious drainage, selenium problems, as well. And we, with Terry Young taking the lead, worked out a— Where is it? [looking for brochure]

Lage: Here, let me put this on hold for— Okay, we found the brochure.

11-01:10:53

Graff: So Terry got together with the districts north of Westlands and with the survey and the Fish and Wildlife Service, and came up with a plan for reducing selenium pollution to Mud Slough, which is where it was going from that area north of—

Lage: From the more northern.

11-01:11:28

Graff: Yeah. And they got into recycling, they got into lower water application, more water conservation, and they worked on technical solutions for the drainage residues. And they also agreed to a schedule of reduced selenium loadings by the districts into Mud Slough, which flows into the San Joaquin River. Now I think the original contract with the drainers is up for renewal. And although they have substantially reduced their selenium loadings, they haven't technically met the numbers that were agreed to.

Lage: On their contract for the water.

11-01:12:40

Graff: On the original contract. And the deal basically was they could use the drain, the part of the San Luis Drain north of Kesterson. So now the question is what's going to happen going forward. And I've sort of stopped paying close attention. But Terry and Hal Candee and Gary Bobker—Hal is NRDC, Bobker is Bay Institute—are the team dealing with the renewal of the contract, basically. And I think one of the reasons we have credibility, to a degree anyway, in the valley is that we're trying to work on solutions to this.

Lage: You really do technical work.

11-01:13:40

Graff: Right, right.

Lage: Now, what about NRDC? Does Hal Candee also come up with solutions, also?

11-01:13:44

Graff: Well, to a degree. We all blend into one another. Hal was the main litigator in the San Joaquin River case, which EDF never participated in. He was a bit of a thorn in my side when Stuart Somach and I were negotiating CVPIA, because we had to basically separate out the San Joaquin River and let that controversy go on, without biasing the law in either direction.

Lage: Because the case was going forth?

11-01:14:20

Graff: Was pending, right. And eventually, NRDC won the case, many years later. And Congress, with Senator Feinstein playing a major role, has since authorized some of the facilities that are needed to make the deal operational. There's a big part of the San Joaquin River that's dry most of the time, and they have to figure out how to re-water it and not lose all the water, ground water. There's a lot of complexity. And restoring salmon in that river is difficult.

Lage: And that was all part of this law case?

11-01:14:58

Graff: Yeah. Well, it became part of the congressional deal. NRDC was winning the law case; but the powers of the federal judge to include some of the technical requirements needed to return salmon to the river were arguably beyond its capabilities, so NRDC decided to cut the deal. And Bay Institute was part of that, and the commercial fishermen.

Lage: It's interesting how these groups work together, or not.

11-01:15:32

Graff: Yeah. And one of the currently kind of amusing things is that the commercial fishermen, led by Zeke Grader—son of Bill Grader, who was Pat Brown's [deputy] resources secretary, you know—was a major player in the San Joaquin River case. And through that, I think, and other things, came to have a lot of respect for NRDC. He has a lot less respect for EDF. But now NRDC and EDF are pretty much the central ground, the middle ground on the delta issues. And Zeke is in the radical camp, the anti-canal camp. And he's having a lot of trouble with that.

Lage: So Zeke was somebody who you—

11-01:16:29

Graff: Is very critical of water marketing, particularly.

Lage: Yeah, yeah.

11-01:16:32

Graff: And it's interesting. I've been emailing—

Lage: From the fisherman's point of view, the commercial fisheries?

11-01:16:36

Graff: Well, that too. So he doesn't like our oceans program, either. But he was also critical of water marketing. I never quite understood that, because it was one of the alternatives to peripheral canal in the old days. And there's a funny kind of current analogy. There's a big grower, or a big district dominated by a big grower, in the state water project, part of the Westside, who has just announced his intention to sell \$77 million worth of water to the Mojave

Water Agency. A classic water transfer. And this is in the face of others on the Westside, notably Congressman Nunes and Governor Schwarzenegger and Senator Feinstein, talking about the awful water shortages on the Westside.

Lage: Yeah. And he's able to sell—

11-01:17:37

Graff: Sell water now.

Lage: Is he going to lay his lands fallow?

11-01:17:42

Graff: Well, I haven't gone into the details yet. But who knows?

Lage: And to Mojave.

11-01:17:49

Graff: To Mojave, which is—

Lage: Is that a desert—

11-01:17:51

Graff: Well, that's the name, but it has urban—

Lage: Oh, it's urban, being more for urban use?

11-01:17:59

Graff: Well, yeah, I think so. It's very expensive water. But the politics is fascinating. So the left wing is up in arms about this, that how can the Westside, at the same time, claim unemployment and water shortages, and be selling water over the hill to a desert water agency?

Lage: It's very ironic.

11-01:18:28

Graff: It is ironic, and—

Lage: Well, the video that you sent me the link to talks about a dying almond orchard. And I wondered, was this an almond orchard that somebody let die by—

11-01:18:40

Graff: Well, I should go back and see what was in the video. It could be the same one. If it is the same one, then it's not in Westlands, it's in Dudley Ridge. Nevertheless—

Lage: Is this 77,000 acre thing in Dudley Ridge?

11-01:19:01

Graff: No, it was \$77 million. It's 14,000 acre feet a year—

Lage: Oh, okay.

11-01:19:08

Graff: —of state water budget entitlement. And it get complicated.

Lage: And that's in Dudley Ridge?

11-01:19:14

Graff: Dudley Ridge is a district within the Kern County Water Agency.

Lage: I see.

11-01:19:20

Graff: And by the way, another deal we did some years ago, which never came to fruition, was an agreement sort of formally written up, with the Berrenda Mesa Water District.

Lage: Say that again.

11-01:19:35

Graff: Berrenda Mesa, also part of Kern County Water Agency. And the interesting aspect of that was the principal negotiator for Berrenda Mesa was Ron Khachigian. I don't know how well you—

Lage: I don't know that name.

11-01:19:52

Graff: —follow Republican politics. Ken Khachigian—

Lage: Oh. Ken, I know Ken Khachigian.

11-01:19:56

Graff: —is his brother. And Ken also did some of the litigation for Westlands on drainage deals— well, on land retirement deals, where the lands that were being retired filed suit against Westlands to make sure they were compensated for the loss of their lands. And I had a little bit of a hand in all that, when Gale Norton came in, brand new, 2001, as secretary of the interior. She had no assistant secretaries or others that could help her, so her principal assistant was a woman named Sue Ellen Wooldridge. Sue Ellen had been a deputy attorney general in California. And the way Gale got to know her was in the tobacco litigation that the state attorneys general were involved in. And I guess the principal Republican attorney general in that litigation was from Colorado at the time, which is— So somehow Sue Ellen came to Norton's attention, and she was brought in as special counsel or something that didn't require senate confirmation. And two issues erupted immediately when Norton came in. One was Klamath. And so Sue Ellen became the principal Norton, Reagan administration, person on— I'm sorry—

Lage: Bush.

11-01:22:04

Graff:

—Bush 43 representative on Klamath. And Karl Rove got involved in that and all that. And the other issue was Westlands' drainage suit and compensation suit. And I went and met with Sue Ellen. And I liked her; I thought she was competent. Later on, she got in big trouble because she became involved with, and later married, Steven Griles, who was one of the people indicted and convicted for corruption in the—

Lage:

Oh, in the Abramoff thing?

11-01:22:50

Graff:

—Abramoff related stuff. It was love, I guess; I don't know. [Lage laughs] I always thought Sue Ellen was a straight shooter. Anyway, the whole question of what could Justice do, what could Interior do, both on drainage and on these lawsuits— I think what happened was Westlands turned around and joined the federal government, to get compensation to their growers, as basically a friendly suit—

Lage:

Oh, I see.

11-01:23:29

Graff:

—between growers and Westlands on one hand, and the feds on the other. And the Bush people signed off on pretty lucrative terms. And the main argument I made to Sue Ellen and to OMB was, you guys are laying yourselves open to big-time liabilities and to Justice. But the two settlements, which were fairly small land acreages, in turn ended up with a lot of money going to the growers in the valley trough.

Lage:

And they went to growers who were retiring land, was that it?

11-01:24:12

Graff:

Right, right, for land retirement.

Lage:

And why was the land retirement happening?

11-01:24:20

Graff:

Because of the drainage.

Lage:

Oh, okay.

11-01:24:23

Graff:

Because of the salts. And Ken Khachigian was one of the main litigators. And more importantly—

Lage:

Ken or Ron?

11-01:24:32

Graff:

Ken. Because we were involved in drainage and all that, I came to Ron's attention, he came to my attention. And we'd signed this kind of bizarre deal,

which wasn't a deal at all; it basically said, we agree to work together on water marketing.

Lage: [chuckles] Was that in the context of these suits?

11-01:25:01

Graff: No. No, Berrenda Mesa had its own issues.

Lage: Oh, okay.

11-01:25:09

Graff: Basically, if I remember correctly, the— I'll go way back. One of the big issues of contention between Pat Brown and the feds was the implementation of the 160-acre limitation. And originally, Pat Brown wanted to implement it on the state lands that would be served by the California Aqueduct. This is way before my time. But in essence, he caved and the limitation was never applied to the state. But that, then, always became a point of contention on anything that required state-federal cooperation.

11-01:26:03

Graff: Because you had to provide separately for financial terms for the state and for the feds. And also for drainage disposal, although the state eventually pulled out of that piece of it. Anyway, that's a lurking issue.

Lage: The acreage limitation.

11-01:26:27

Graff: Acreage and federal-state relations. But federal-state relations in the seventies, when I was first involved in water issues, were much more tense and conflicted than— I think it's become much more that at least the water agencies have united, and they signed a coordinated operation agreement in 1986. I don't know if we have time [for that today].

Lage: It's 11:15. I think we have time. Do you want to take a break?

11-01:27:00

Graff: Yeah, just for a couple minutes.

Lage: Okay. [audio file stops and re-starts] Okay, I'm turning back on, and we're going to talk about federal-state issues.

11-01:27:08

Graff: Right. So the peripheral canal loses in '82. And one of the post-peripheral canal innovations is the Committee for Water Policy Consensus, chaired by Sunny McPeak, who had been one of the leaders of the opposition to the referendum.

Lage: Right. Coming from the delta.

11-01:27:35

Graff: Right. Contra Costa County supervisor. And promoted by the delta interests.

Lage: So this was a state agency? Or state appointed committee?

11-01:27:50

Graff: No, this is a privately appointed committee, self-appointed committee.

Lage: Oh, okay.

11-01:27:57

Graff: Sunny makes Jean Auer the staff head of the committee, with an assistant by the name of Lori Griggs. L-O-R-I, Griggs. And I'm on it and various other environmentalists are on it, and local government people, basically. Delta people. And it's there to come up with an alternative water policy. That's its raison d'être. So that's building up in the '83 to '85 period. Meanwhile, the water users are regrouping, as well. And Governor Deukmejian proposed Duke's Ditch. And that gets defeated, mainly through the efforts of Phil Eisenberg, at the state level, who called it a peripheral canal, which is ironic.

Lage: And who came up with the term Duke's Ditch?

11-01:29:02

Graff: I claim Phil did, but I'm not sure. Anyway, these groups started to meet and form some kind of loose coalition of interest, while the federal and state governments were negotiating a deal. This was Dave Houston for the bureau and Dave Kennedy for the state. And they kind of came to the conclusion that the state-federal fights were counterproductive; they were limiting the ability of the water purveyors to get what they wanted. And so they eventually worked out an agreement. The only problem was that it required congressional approval.

Lage: This is the coordinated operating agreement [COA].

11-01:29:56

Graff: Operations agreement. And we went to Miller, the Committee for Water Policy Consensus, and said, "We've worked out something that we think the water projects should be required to do before they sign an agreement. We agree that coordinated operations, in concept, is a good thing; but it ought to provide explicitly for meeting delta standards. And in particular, delta current and future standards." Well, Pete Wilson introduced a bill simply to authorize the COA. Cranston sort of hung on back. And Miller announced that he would only support the bill if it provided for delta protection. So that was fought out over the '85-86 congressional calendar, and eventually, Wilson quietly acquiesced. And there was a lot of debate over the specifics of what the delta protection language would say. But basically, the environmentalists and Miller won on that point because the other guys wanted the agreement badly enough, and they thought they'd fight that fight in later wars. So that's the way the agreement was reached. And overlapping this, of course, was that

Miller had acquiesced in '83-84 in the Pleasant Valley fight, but he wasn't going to do that again. People were watching him a little more closely. So he fought hard for a good outcome in the COA

Lage: Now, would that be something where you would be involved, or others from EDF, in working with his staff or—

11-01:32:15

Graff: Yeah. I don't recall the details. It's just two or three provisions. And I don't recall how— I know we weighed in. But others did, too; it wasn't just EDF.

Lage: It was that united front of the—

11-01:32:31

Graff: And it was the Committee for Water Policy Consensus. And one of the interesting sort of personal sidebars of that was when, locally, Sunny McPeak took credit, and federally, George Miller took credit, and the name McPeak never came up. And I can't remember which election cycle it was, but McPeak challenged Dan Boatwright for his state senate seat. Ran against an incumbent, which is a no-no. And she lost, and her political career, which had seemed so promising because she was a statewide figure as a result of the referendum, basically ended. And she left the committee to become the head of the Bay Area Council, and sort of became more corporate in her orientation.

Lage: But didn't she keep an interest in these delta issues, the water issues?

11-01:33:44

Graff: Oh, absolutely. And locally, she was a controversial figure among environmentalists because she kind of cast herself as the swing vote or the deal maker on growth issues. So she sided with Blackhawk and some of the other fancy suburbs that had a lot of local opposition.

Lage: Was this as her position at Bay Area Council, or earlier?—

11-01:34:19

Graff: Well, no, when she was still a supervisor.

Lage: I see.

11-01:34:22

Graff: Anyway, I don't know the Contra Costa politics very well. But to my surprise, actually, because on delta issues she was much better than Boatwright— Boatwright was a go-along guy. When he figured out what the position was, he would do it, but he rarely took a leadership position on—what do you call it?—delta issues. Although when Sunny came in, he suddenly became a big anti-peripheral canal guy. His son worked for one of the big developers, both in Contra Costa and Solano Counties; built all that stuff west of the Suisun Marsh. And so growth politics is complicated.

Lage: The more you talk, the more you see the— It is not an easy matter to take this apart and put it back together. Or to make simple statements about it.

11-01:35:34

Graff: I'll give you another little piece of growth politics. In the last mayoral election, what became the three prime candidates were Ignacio De La Fuente, Nancy Nadel, and ultimately, Ron Dellums.

Lage: Yeah. We're talking about Oakland here.

11-01:35:59

Graff: Right. Anyway, Nancy Nadel started her career as an East Bay MUD board director, and then became a city councilwoman. She also worked at EPA. I'm a big Oakland A's fan. The expansion or moving—yeah, ultimately became the moving—of the Coliseum became a potential issue in the mayor's race. And De La Fuente jumped the gun and said, "I've got a site, a great site for Coliseum." And Nancy Nadel, who has about as much interest in baseball as in my pinkie, [Lage chuckles] was caught short. Or at least I thought so. So I went to her and I said, "I'll, pro bono, help you with your baseball position." She also turns out to be very close friends of our neighbors, and her daughter went to College Prep, was a student of Sharona's—or at least was at the school when Sharona was there. So Nancy said, "Sure. What the hell. I ain't got nobody else, and you're free." So we went to see Lew Wolff, who's the owner's representative and who was in charge of what's going to happen next to the A's. And while we're sitting there in his office, his daughter comes in and says— What's his name? Stewart is Barbara Boxer's husband's name. But her son's name, I can't remember what his name is [Douglas]. Anyway, he was being talked about as a potential candidate for the Oakland City Council.

Lage: Barbara Boxer's son?

11-01:38:05

Graff: Son. And she comes in and says, "[Doug] Boxer is taking care of my kids. He's over in the Coliseum, so I don't have much time," and da-da-da-da. And then she runs out. Well, I had encountered the young Boxer previously in a water marketing contest. He worked for a company that was trying to do water deals. And it's clear that there's a political connection here between a prominent Oakland businessman—actually, a San Jose businessman, Lewis Wolff—and the Boxer family.

Lage: [chuckles] Right.

11-01:38:56

Graff: Anyway, [Douglas] Boxer has since been appointed to the City Planning Commission, which is kind of a stepping stone to eventually running for political office here. I like him.

Lage: He's a brave man, to run for political office here.

11-01:39:08

Graff: Right, office in Oakland. It's in the genes. All of a sudden, Vicki Kennedy [wife of Senator Edward Kennedy] is reconsidering her position on the senate; I don't know. Maybe she never really was not interested, but didn't want to say it before the [Senator Kennedy's] funeral. Okay, so that was a big segue.

Lage: Is there a—

11-01:39:39

Graff: Yeah. The basic point I was making was Miller was, without putting too fine a point on it, dissing McPeak. And McPeak was trying hard to get credit.

Lage: For the water—

11-01:39:55

Graff: For the COA.

Lage: Yeah. Yeah.

11-01:39:58

Graff: And that's just the way—

Lage: That's politics.

11-01:40:00

Graff: That's politics.

Lage: Right. Now, is there an end to the story about Nancy Nadel and the A's? Did you develop a position for her?

11-01:40:07

Graff: Well, we did, and we went to see Lew Wolff. And he basically said, "I'm not doing Oakland. I'm going to— Unless you can come up with a real deal." Oh, no, there was more to it. That was when, at least theoretically, the land north of the Coliseum was still a potential site. The big problem there was eminent domain. And that was when eminent domain was a bit issue.

Lage: Hot issue.

11-01:40:36

Graff: And Nadel, as a good, true leftist, was not going there. So we just had polite chit-chat and left, and that was the end of it. So my career—

Lage: And Nancy Nadel did not win the mayoral—

11-01:40:52

Graff: Did not win. Well, and then Dellums entered, and she was toast. She probably would've been toast, anyway. But anyway, she's gone into the chocolate business.

Lage: [chuckles] She has?

11-01:41:04

Graff: Well, she finally was termed out of the council and she's trying to sell premium chocolates.

Lage: Well, that's an interesting next step in her career. Okay, now where are we with federal and state—

11-01:41:20

Graff: Well, we finished COA, I think. The issues in COA, to some degree, come up again in CVPIA and then in the [CalFed] Bay-Delta Accord. And there's litigation— Are we—

Lage: Do you want to talk about the Bay-Delta Accord now?

11-01:41:39

Graff: Well, let's do something that leads up to it, which is the Racanelli decision.

Lage: Okay.

11-01:41:45

Graff: The Racanelli decision comes out in, I don't know, early— Well, I can't remember. '88, maybe. '87, '88. It's a District Court of Appeal. Racanelli is the chief judge; Bill Newsom is on the court, as well. And Sims, I think; was he the third judge? I can't remember. Anyway, John Krautkraemer was our main delta person by that time, and he was doing the State Water Resources Control Board hearings that led to the appeal.

Lage: And what was the issue here?

11-01:42:32

Graff: The basic issue was the Brown era delta decision. When John Bryson was president of the water board, had purported to save the delta, he did that in two ways: with interim actions that supposedly kept things under control; and what I always felt was inappropriate, an endorsement of the peripheral canal. That was not the water board's business. And that was early; that was like '78. And I think by its terms, it was ten-year decision, at which point the canal would be built and they would reconsider all the restrictions and environmental guarantees, without saying which direction. So the delta interests and environmental interests objected and a lawsuit was filed. It got to the Court of Appeal, and the Court of Appeal agreed that the board decision was inadequate, and basically ordered the board to come up with a better decision.

Lage: Decision that would protect the quality of the water in the delta.

11-01:44:13

Graff: Water in the delta. And it left open major subsidiary issues. But it was clearly viewed at the time as a major environmental victory. A couple sidebars on that. Later on, Mike Herz, who was the Baykeeper, called me up and asked me if I wanted to go on a sailing trip in Baja. And I said sure. So I asked him who else was going and he said, “Well, my friend John Racanelli.”

Lage: [laughs] Was this after—

11-01:44:54

Graff: After, fortunately. Also Tom Silk went, who was a big funder in the environmental area.

Lage: Yeah, the Columbia Foundation.

11-01:45:02

Graff: Right, right. And so we had a great time.

Lage: So this is sort of one of the jaunts. [chuckles]

11-01:45:07

Graff: It’s one of my jaunts. I had to pay for my flight to the Sea of Cortez. Loreto. I don’t know, it’s a smaller city. It’s not Cabo, which has become famous further north. And we had a fabulous time deep sea fishing. And we’d catch some enormous fish, bring it to shore, and the folks onshore would help us cook it up.

Lage: Oh, wow.

11-01:45:42

Graff: It was a great trip, beautiful trip. It’s just a gorgeous place. And we all slept on the boat, on Mike’s boat. I guess he rented it.

Lage: Did you talk business?

11-01:45:53

Graff: Not really. We talked a little about the case. Anyway, so Wilson’s water board—by which time Don Maughan, who had been on the board, also with Jean Auer and Ron Robie—really then tried to respond to the court’s decision, and came up with an environmentally oriented decision, which Pete Wilson arbitrarily pulled.

Lage: Really?

11-01:46:31

Graff: And basically, two of the board members were up for reappointment. I think it was 1990 by then, or it might’ve been ’92. And they just pulled the draft opinion, and it never resurfaced.

Lage: I wonder—

11-01:46:53

Graff: And some of my more radical friends have been kind of trying to find it and take it up. Gray Brechin, do you know him?

Lage: Yes.

11-01:47:03

Graff: You should ask Gray if he has a copy. But others, the radical left are still trying to bring up this in the context of the current peripheral canal fight. But that was part of the background of CVPIA, that we had been promised state water quality standards in the COA and in Racanelli, and they were on the table and withdrawn by Wilson.

Lage: I see, so that—

11-01:47:43

Graff: So that formed some of the backdrop of what became CVPIA. And the water interests were basically trying to get the board to rewrite what Maughan and his folks had done.

Lage: And did you ever see the draft opinion? I wasn't clear about that.

11-01:48:06

Graff: Oh, yeah. Yeah.

Lage: It was out there in the—

11-01:48:08

Graff: Yeah, it was out there. And I'm sure it's somewhere in our files, but— Probably in storage somewhere. Or probably in John's files. By the way, have I talked about John?

Lage: John?

11-01:48:19

Graff: Krautkraemer.

Lage: You've mentioned him, that he went on to do a lot of the litigation.

11-01:48:23

Graff: He did a lot of the litigation in the water work, both—

Lage: But you haven't talked in—

11-01:48:28

Graff: Well, he was just a wonderful man, a great guy, who met a tragic end in a ski accident. Maybe this applies to my comments about Miller and McPeak. When the Bay-Delta Accord was ultimately signed, December 15, 1994, the

issue came up, who would represent the environmental community at the big ceremony with Wilson and Babbitt and the folks standing around and so on. Who would speak to—and I never told anyone this—I thought, wow, now it's my turn. [Lage laughs] And then I decided no, that was not the right thing to do. And I said John should be the guy. He had done the real negotiating.

Lage: On the accord.

11-01:49:34

Graff: On the accord. And so it ended up being the three environmentalists up there were John and David Fullerton and Gary Bobker.

Lage: And who did they represent, Fullerton and Bobker?

11-01:49:46

Graff: David Fullerton represented Natural Heritage Institute, and Bobker the Bay Institute. And they were the right ones; they had done the work. And John was the speaker. Each of the three constituencies, urban and ag [and environment], got one speaker. And he did a marvelous job. And I always thought—I haven't told Nancy, his widow this; she is a good friend and we see [her] a lot and she works with my wife—but I always thought that his death was related somehow, at least in a cosmic sense, to the accord. He had got in a big car accident around the same time.

Lage: Around the time the accord was signed?

11-01:50:35

Graff: When they were negotiating the accord. Near the big truck stop at the top of the hill, where you go into Vallejo, coming back to the Bay Area.

Lage: From one of the sessions.

11-01:50:47

Graff: From one of the sessions. That was before the accord. And the accord was—Well, his death was a little over a month afterwards.

Lage: Oh, wow.

11-01:51:00

Graff: And I just wonder whether— He was an expert skier.

Lage: That maybe some of the injury from the car accident—

11-01:51:08

Graff: No, no, that he just was thinking about his great triumph.

Lage: Oh, oh, oh.

11-01:51:15

Graff: And maybe I should've demanded to be up on the stage, I don't know. Anyway, that's just kind of like— You always wonder why things happen the way they do.

Lage: Yes. So the accord established CalFed, right?

11-01:51:33

Graff: Among other things, yes. It also mandated—and this was kind of obscure, as a matter of legal principle, and later challenged by the delta interests—that the water board immediately issue a final decision updating the water quality standards. And that came out in May of '95. And there are two stories around that that are of interest. We're jumping ahead of CVPIA now. But one is that a lawsuit was filed against the '85 decision. But the other is that— Well, it was filed against the decision, both by the delta farmers and by the outlier environmentalists. And the court upheld the decision. And then Steve Volker, who represented the environmentalists, went into the case to claim that he should get attorneys fees. And I was outraged. He had earlier objected to the accord on behalf of Audubon Society and the local Audubon guy, Arthur Feinstein.

Lage: So Audubon objected to the accord?

11-01:53:11

Graff: Objected to the accord.

Lage: Did they think it wasn't strong enough environmentally?

11-01:53:16

Graff: Yeah. Well, I always thought Steve did it because he wanted the fees. But anyway, to the amazement of some of the water people, I immediately stood up and said, "This is outrageous. We're 100 percent behind this, and these guys are out to lunch." And that kind of forced the hand of many of the other enviros. And Barry Nelson, for NRDC, to his credit, and of course, Bobker and Fullerton and many others, sort of came out on behalf of the accord.

Lage: And what about groups like the Sierra Club and Save the Bay?

11-01:54:12

Graff: Barry was Save the Bay then.

Lage: Oh, he was Save the Bay at the time.

11-01:54:18

Graff: Sierra Club, I think, was mostly silent. Steve was, I think, still Sierra Club Legal Defense Fund. Anyway, I threatened to take him to the state bar because—

Lage: For filing the suit or for asking for attorney fees?

11-01:54:52

Graff: For not consulting with his clients.

Lage:

Oh, I see.

11-01:54:55

Graff: I remember now a little bit more. There was an ongoing suit. And he wanted to file, and maybe did file, an amended complaint that included the accord as an additional wrong. And I said, “You didn’t consult your client. Your client’s on the other side. You can’t do that.”

Lage:

Now, who was his client?

11-01:55:24

Graff: Environmental Defense Fund.

Lage:

Oh, oh, oh. I didn’t get that.

11-01:55:28

Graff: Yeah. And so he was super-vulnerable to an ethics violation.

Lage:

Oh, I see. Okay.

11-01:55:38

Graff: And there were major negotiations at higher levels, between Earth Justice and—I don’t know when they made the name change—and EDF, in which they filed a formal apology. And Steve essentially had to wind his way out of the suit. Anyway, later on, he tried to get attorneys fees, and I helped the state block that. [Lage laughs] To me, he’s always been not to be trusted, and I won’t work with him.

Lage:

And does that hold for other Earth Justice/Sierra Club Legal Defense Fund folks?

11-01:56:25

Graff: No, in fact— no, Mike Sherwood, I went to prep school with, he’s a terrific guy. And the others, Bill Curtis and Buck Parker and others. I’ve had a lot of friends over there. And they got rid of Steve, not to put too find a point on it. I can’t prove that, but—

Lage:

But it appears that way.

11-01:56:58

Graff: Yes, but he’s still a major factor in environmental litigation in California.

Lage:

Who is he with now?

11-01:57:06

Graff:

I think he's on his own. But occasionally, cases come up where we get asked if we want to file amicus, and people say Volker's the attorney; that's enough for me, irrespective of the merits. [phone rings]

Lage:

This is time to quit, don't you think?

11-01:57:26

Graff:

Okay, yes.

Interview 9: September 24, 2009

Begin Audiofile 12 09-24-2009.wav

Lage: Okay, now we're recording. And today is September 24, 2009. And Tom, this is our ninth session, audiofile 12. We are here at Summit Hospital, talking about water marketing issues. You thought we should start with the Colorado River Board; is that still your thinking?

12-00:00:26

Graff: Yes. I was appointed to the Colorado River Board by Governor Edmund G. Brown, Jr. in 1981, in the middle of the political campaign over the so-called peripheral canal referendum.

Lage: And I think you mentioned that you were surprised he appointed you at that point.

12-00:00:49

Graff: Yes, I was.

Lage: But nevertheless— [chuckles]

12-00:00:53

Graff: So even as that was going on, we commissioned a study, Zach Willey and I did, by Rob Stavins, who later became prominent in many other ways. In fact, I saw him when I was in Boston recently. And he produced— Well, the [peripheral canal] referendum was in June of '82, the so-called Hap Dunning initiative was in November of '82. Hap had been executive director of the governor's commission for water rights law, under Chief Judge Wright, before whom I'd argued the East Bay MUD litigation. Rob produced a study early in 1983. And one of my proudest moments was getting Harvey Banks— I think I've already mentioned this.

Lage: You may not have it on the tape, though, so let's say that again.

12-00:02:03

Graff: Okay. Harvey was the father of the State Water Project. And he wrote a really interesting and fun forward. And that sort of, I think, was the first of a series of unusual connections that I made over the years with people that were not normally associated as environmentalists.

Lage: Right, he was really an old-line water guy.

12-00:02:27

Graff: Right, right. A really nice guy. I liked him a lot.

Lage: And how did you bring him around to see the virtue of this water transfer?

12-00:02:32

Graff: [over Lage] I called him up. Well, he was retired. He cared about delivering water to people. He was not hung up on the bureaucracies. And I remember being in his living room, in a kind of suburban house in San Mateo, I think it was. Somewhere on the peninsula. And we had a nice long chat, and he said he'd do it. And then he did it. I mean I didn't do it, he did it.

Lage: Yeah. He wrote the forward. I don't think we said what it was. This must've been the study for—

12-00:03:06

Graff: The Stevens study, trading conservation investments for water.

Lage: Right.

12-00:03:10

Graff: And in fact, he criticized it for being too timid.

Lage: Interesting.

12-00:03:14

Graff: Because we were trying to be very careful not to overdo it the first time.

Lage: Now, what impact did that study have?

12-00:03:25

Graff: Well, I think it had quite a bit. But like most things in this world, it's never clear, one-shot, obvious what leads to what. The first reactions by Carl Boronkay and David Kennedy were negative. But we got a lot of good press for it.

Lage: You had an editorial in the *L.A. Times*.

12-00:03:50

Graff: I don't remember that. We had a great story by Cheryl Clark, in the *San Diego Union*, and the [*Sacramento*] *Bee*, led by Peter Schrag and Rhea Wilson, who were big supporters. It took the *Times*, I think, a little while, but eventually, Jack Burby, who had been Pat Brown's press secretary, became a big advocate of our work.

And there's an article that I haven't been able to find, an editorial, where he credited George Miller—not the philanthropist George Miller, but the congressman—and Sunny McPeak, I think, and I, with transforming California water. And there were a series of editorials somewhat related to water marketing, the most important of which was during the campaign for the peripheral canal, where I advocated for alternatives to the canal, including a water marketing style alternative. And the *Times* did something that it rarely does, a few weeks later, and ran a rebuttal by Earl Blaise, the general manager of Met.

Lage: A rebuttal to your—

12-00:05:11

Graff: To my piece, yeah. And I was accused of violating the— I can't remember exactly how it as phrased, but the protocols for being a board member of the Colorado River Board.

Lage: Oh, oh, oh. Oh, so it was seen somewhat as a conflict of interest?

12-00:05:33

Graff: Right, right. So they put up a censure vote.

Lage: Within the board?

12-00:05:40

Graff: Within the board. To censure me for having written it. And I don't remember the exact vote, but I think I won the first vote because of a vacancy, and because John Benson, this old-time farmer—he wasn't that old at that time—in the Imperial Irrigation District said, "My God, this is a country with free speech." [they laugh]

Lage: That's nice to hear.

12-00:06:10

Graff: And Myron Earl Holburt, who was the then executive officer, was apoplectic. And then the next meeting, they got the extra two votes and reversed the decision.

Lage: So you did get censored for writing that.

12-00:06:25

Graff: Right. Which did not exactly impact my career in any discernable way.

Lage: No. But you stayed on the board, it was just—

12-00:06:33

Graff: Yes. And anyhow, the funny thing about that board was— I served from '81 till early '83, by which time Deukmejian had been elected. And during the peripheral canal campaign, I worked very closely with Boswell and Salyer, with the people they selected, really, to run the anti-canal campaign. One of them was Doug Watts. And Doug, with Rollins—what's Rollins' first name? [Ed]—had the Good Morning in America slogan for 1984.

Lage: Yeah. I can't remember the first name, but he was a Reagan guy, wasn't he?

12-00:07:14

Graff: Right. They were all Reagan guys. Actually, Watts was more a Deukmejian guy. And they turned that '84 election around—no, the '82 election around—for Deukmejian at the last minute, I guess, barely. Anyway, that was sort of

the first kind of public major display of our wares on water marketing. And Terry Anderson comes into that. Have I mentioned him?

Lage: I've certainly heard the name, but I'm not—

12-00:07:51

Graff: Terry, I think even then, was with a group called PERC, Political Economy Resource Center. They termed themselves the free market environmentalists. He wrote an op-ed in the *Wall Street Journal* touting our work.

Lage: So this was a national group.

12-00:08:10

Graff: National group, headquartered in Montana. He now spends a lot of time at Hoover. Really nice guy. He hunts with bow and arrow.

Lage: So what is his—

12-00:08:23

Graff: He's an economist.

Lage: Oh, he's an economist and believes in free market.

12-00:08:27

Graff: Right. And much later, when Gale Norton became secretary of the interior, he had great hopes as a free marketer. And she got battered and her whole department was discredited in various ways, and he got very disillusioned. He and I were one of the first people to fly into Washington DC after 9/11, to have a meeting with Gale and her then still fairly new cohorts in Bush 43.

Lage: To what—

12-00:09:09

Graff: To tout marketing and—

Lage: In many areas, or—

12-00:09:13

Graff: No, in water.

Lage: In water.

12-00:09:14

Graff: In water. And to oppose subsidies.

Lage: Now, I'm curious about this free market—

12-00:09:23

Graff: Well, let me get to that quickly.

Lage: —concept. Okay.

12-00:09:25

Graff: Probably the best single source— I don't write much for journals, but Terry persuaded me to write like a ten-page article for one of his meetings, which I then converted.

Lage: Let me make a stop here. [audiofile stops and re-starts] We're back on.

12-00:09:59

Graff: Good. So I wrote this piece, and it appeared in a UCLA journal.² And if I'm not around or I can't get upstairs, it's accessible.

Lage: Okay. Is it a journal of law or economy?

12-00:10:17

Graff: I don't remember now. Anyway, it dealt with— My great thesis, such as it was, was that the public trust— well, was that water marketing could do a lot but by itself, it was not sufficient, and inevitably, politics would enter in.

Lage: Were you saying inevitably it would or inevitably it should?

12-00:11:03

Graff: It would. And in various ways. There're basically a lot of trends in water law and policy that are, in one way or the other, in conflict with one another. There's the ancient rights, which is what you market, in theory; and contractual rights and other kinds of rights. But there's also a waste and unreasonable use doctrine and unreasonable diversion doctrine, which is what we promoted in the East Bay MUD case. And then there's just the practical politics. If you're going to take water away from Los Angeles, so to speak, because you're giving it back to Mono Lake, you'd better come up with some ideas for giving them alternative water supplies. So all those things kind of intertwine in unusual ways. And there's actually an almost perfect counterpart. As we speak, the legislature's engaged in— They missed the regular session, as you know, but they're going to come back in a special session shortly.

Lage: And there was quite a piece in the *Chronicle* today—I don't know if you saw it—

12-00:12:27

Graff: No, I haven't seen it.

² *Thomas J. Graff*, "Environmental Quality, Water Marketing, and the Public Trust: Can They Coexist?" *UCLA Journal of Environmental Law & Policy*, 5, 137, 1986.

Lage: —about East Bay MUD and San Francisco Water District are very upset about sending more water south.

12-00:12:36

Graff: Well, there's all kinds of crosscurrents in who pays for what and what's fair to the area of origin, people have to pay for something that's theirs—very many crosscurrents.

Lage: So are you thinking that means that water marketing can't solve everything? In fact, you said that to begin with.

12-00:12:56

Graff: Well, yeah, it can't solve everything. But on the other hand, after all this hullabaloo by Congressman Nunes and Westlands and Sean Hannity and Arturo Rodriguez and others, out of the blue two, three weeks ago, a big grower in Tulare County announced that he was selling his water to Mojave.

Lage: Is he the one that was sending like 70,000—

12-00:13:32

Graff: Right, right.

Lage: So what makes a water market happen, and what makes it not happen? At one point, you said that it wasn't being used as much as you had thought.

12-00:13:47

Graff: Yeah, that's why I thought this was quite extraordinary. But depending on where you are, how expensive your water is, how good the opportunity it is to sell to someone else, people ignore all the local politics and say, here we go.

Lage: Yeah. But is that a good thing, policy-wise, to ship water to Mojave? Is it being shipped for development?

12-00:14:14

Graff: Well, that's another question, the whole question of growth and to what extent is growth a factor. Growth was a factor in the '82 election.

Lage: The peripheral canal election.

12-00:14:30

Graff: Yeah. One of the reasons the south partially voted against the deal was that they feared more and more sprawl. So it's very much intertwined. I don't pretend to have all the answers. But somehow we got identified, I got identified, with pushing the envelope on marketing. And many of my left-wing critics object to that.

Lage: Do you think the objection and the endorsement of marketing is based on a larger political philosophy? Or the ones who object just object to using the market in that way?

12-00:15:21

Graff:

People's political philosophies are flexible. Here we've just gone through this humongous budget battle where Republicans say, no new taxes, no new fees, no new nothing. And then they turn around and say, we want a massive bond issue. For the water. And Schwarzenegger says, "I have to have a bond or I won't sign a bill." And then there's another whole layer on this, which goes back to the Colorado River Board, and that is, whose water is it? That's the question I left in the last one [1996 oral history on CVPIA].

Lage:

Right.

12-00:16:06

Graff:

The Imperial Valley is the most heavily non-Anglo county in California; yet the water rights are basically controlled, directly and indirectly, by a small number of old-time Anglo farmers. And some are smart enough to know they have to share the wealth, and most don't. It's very analogous to resource wealth in another resource, like oil in the Middle East or Nigeria. The folks who control things hang on to them.

Lage:

So those who are there first have this crucial right to the water.

12-00:16:52

Graff:

Either there first or have bigger guns.

Lage:

So are the people, the diverse population that you speak about, are they city folks? Or are they farm workers? Is Imperial Valley mainly a farming area?

12-00:17:09

Graff:

Well, it's a farming area, yeah. But it's somewhat diversifying. It has prisons, it has Indian casinos, it has the budding geothermal industry. And it has the border, which has a lot of employment associated with it. So nothing is ever static completely.

Lage:

So do these farmers, these old-timers, control the water that goes to homes?

12-00:17:40

Graff:

Well, that's also— John Benson ended up the mayor of El Centro [actually mayor of Brawley]. So he became an urbanist.

Lage:

Now, where did John Benson start? I'm losing track of people's names.

12-00:17:52

Graff:

He was the guy who voted to say I was entitled to free speech.

Lage:

Oh, yeah.

12-00:18:01

Graff:

And there's a lot of crosscurrents. Also the consultants down there are all Anglo, with a few exceptions.

Lage: The consultants?

12-00:18:14

Graff: For the IID, the Imperial Irrigation District.

Lage: Oh, okay.

12-00:18:17

Graff: There's also a tension between the irrigation district and the board of supervisors in the cities, over who controls what and how much do they fob off on the cities to keep them quiet? Anyway, I've recently been trying to get a good friend, a very smart lawyer who's done a lot of water-law-related work in the East L.A. Latino suburbs, involved in all that. But they've been keeping him at bay. His name is Arnaldo Beltran. And I have another ally who works for some of the big farmers, the somewhat more enlightened farmers, who's trying to get him in.

Lage: To get him in to—

12-00:19:12

Graff: To sort of help facilitate a more comprehensive arrangement. Plus you have to solve the environmental impacts on the Salton Sea and in the delta. So it's a multi—

Lage: Yeah. It's a very complicated—

12-00:19:27

Graff: And you've got Las Vegas wanting more water, and climate change coming to the Colorado River basin, and shortages already. So it's plenty of work for the next few generations.

Lage: [laughs] I'll say. And is it work that needs to be not just based on water transfer, but on planning? I keep seeing these two things in contrast; maybe I'm wrong.

12-00:19:57

Graff: No, I don't think you're wrong. Generally, anyway. It's those two things and more, I guess I would say. And for better or worse, the US traditions in planning are not as robust as in Europe. But even that's changing on the international level, right?, with all this financial stuff.

Lage: But when you talk about what's happening there in the Imperial Valley, my reaction is, well, they should be challenging the prior appropriation, because why should these farmers, who are really using public water, get to control a changing social system?

12-00:20:41

Graff: Well, you mean the Latinos?

Lage: Well, the Latinos and the growth, the more complex society; it's not just a few farms.

12-00:20:51

Graff: No, I think that's correct. I got involved in a challenge by neighboring land owners at the Salton Sea, at the time when the Salton Sea was rising—it's now dropping again—claiming that they were being flooded out by the wasteful practices of the IID. And the lawyers who were then representing the growers are now representing the IID.

Lage: How does this happen?

12-00:21:35

Graff: And there's a lot of bad blood, six different ways. And a good friend of mine has been representing the supervisors.

Lage: So the supervisors are sometimes at odds, or often at odds, with the water district.

12-00:21:49

Graff: Yeah. But the water district has the money, basically. And then IID, unlike many water agencies, also controls electricity. Not just in Imperial, but to a degree, in Coachella, which is a much more wealthy community.

Lage: And who votes for the IID? Is it an elected board?

12-00:22:10

Graff: It's one person, one vote. And I think it's by district, but the votes are national. [audiofile stops and re-starts]

Lage: Okay, here we go. Now, you just said someone was more right wing than you. Do you consider yourself right wing? [chuckles]

12-00:22:31

Graff: No, I consider myself sort of hard to peg. The thing we did is we took economics seriously, before any other environmental group. Environment was—in the Stewart Brand, E.F. Schumacher, early Jerry Brown era—considered sort of granola.

Lage: Right.

12-00:23:01

Graff: And we kind of shifted that, started the shift.

Lage: And it was also more emotional.

12-00:23:08

Graff: Right, right.

Lage: Before, even this small-is-beautiful era, you had the Sierra Club appealing to the beautiful Grand Canyon, don't—

12-00:23:17

Graff: Yes. Right, right. I was watching on PBS yesterday, about— It was a profile of Wallace Stegner.

Lage: Ah. Leading to the series on the national parks [by Ken Burns], probably.

12-00:23:32

Graff: So yeah, I agree, emotional. And it's still emotional, in a lot of people's minds. We live in a very complex world.

Lage: Yeah. Okay, now, where were we? Imperial Valley.

12-00:23:52

Graff: So Colorado River Board was a very sleepy agency. We had one other to-do about Indian water marketing. Have I mentioned that already?

Lage: You have not. I noticed it on your notes.

12-00:24:09

Graff: Okay. Watt, when he came in, was a believer in marketing. And so he said Indians ought to be able to market their water rights. And that was another time when— Or maybe that was the time the votes came in on our side. But the way the board was organized at that time, there were three public members, of whom I was one. One was loosely a representative of the Colorado River Indian tribes. And then there was a third, who was a noted scholar on Colorado River issues, a guy named Milt [Milton Norman] Nathanson, who wrote something called [*Updating the Hoover Dam Documents*]. And then there were six agency representatives, appointed by the governor but from slates proposed. And I think that was the time that the vote was four to three to endorse the Watt position. And it drove Myron up a tree. Myron later asked me to help him prevent the El Toro Airport.

Lage: Now, why was Myron an active—

12-00:25:43

Graff: He was the executive officer.

Lage: Oh, he was the executive officer who was pretty much on the side of all the water districts.

12-00:25:48

Graff: Right. Oh, yeah, absolutely. Very close to Boronkay.

Lage: So why did they object to the Indians marketing their water? What would be the effect?

- 12-00:25:58
Graff: Because it loosened their control of everything having to do with the river.
- Lage: Like a slippery slope idea?
- 12-00:26:07
Graff: Right, right. Yeah. And the poor Indian guy, who was over his head pretty much, he had no choice. He had to vote for the Indians, even though it was Watt. Another Watt thing at that time had to do with Westlands. I don't know if I've described—
- Lage: That, I think you've discussed. Where you went in the lawsuit on his behalf.
- 12-00:26:34
Graff: Right, right, right.
- Lage: You did discuss that about that pretty thoroughly.
- 12-00:26:36
Graff: Okay. But this Decision 1600 that I just talked about, that's what became the proceeding against IID before the state water board. And what I remember, the story I remember about that is Met stayed studiously neutral, and used to coach me from the back benches.
- Lage: Now, I guess I'm not getting the context here.
- 12-00:27:21
Graff: Well, the idea was—
- Lage: There was a proceeding in front of the state water board.
- 12-00:27:26
Graff: Water board. And eventually, four or five years later, they issued Decision 1600, which basically took up our position, which was it was cheaper for Met to conserve water in Imperial than it was for the farmers to do it themselves.
- Lage: So this was in support of the Stavins report idea.
- 12-00:27:57
Graff: Right, right, right.
- Lage: So it finally came to fruition.
- 12-00:28:01
Graff: Right.
- Lage: But Met kind of stayed in the background and let you do the arguing. [they laugh] That's interesting.

12-00:28:08

Graff: Yeah. And they eventually cut the deal between themselves, between Met and— After the decision came out.

Lage: Yeah. Well, that's good, to kind of complete that story.

12-00:28:16

Graff: Right, right. But do we get credit? [Lage laughs] Who knows?

Lage: This may not be the place to talk about this, but tell me, were you active in various legislation in the state that made water marketing possible?

12-00:28:35

Graff: Well, [California State Assemblyman] Richard Katz was trying to push bills. His big focus was on the pricing of the aqueducts because as long as the big agencies— And there only a handful, at most: Los Angeles, Met, East Bay MUD, San Francisco, state and federal. And if you were going to transport water around the state, you pretty much had to use those six conveyance facilities. And as long as they could set the price one way or another, indirectly or directly, water marketing was going to be very hard to do. So there were various entrepreneurial efforts to break those monopolies or oligopolies. And Katz was at the forefront of that.

Lage: Now, what motivated him? Was he—

12-00:29:28

Graff: He was a kind of free thinker, more than most.

Lage: So this idea was bobbing up in many areas of water—

12-00:29:37

Graff: Right, right, right. We didn't give him enough help, probably, but I don't know that we could've done much more than we did.

Lage: Did you help write bills and things like that?

12-00:29:51

Graff: I think he wrote most of them. His terrific staffer was a woman named, most of the time— Well, there were a couple of them. There was Patty Schifferle and there was Kathy Van Osten. Another person I worked with, although not so much on marketing, was Sherry Hankins, Art Agnos's wife. She was a staffer up there, also. So there was stuff going on. And they bled into Miller-Bradley somewhat. They were talking state-federal.

Lage: So this is all sort of background to CVPIA.

12-00:30:29

Graff: Right, right. That came up in the late eighties. And then one other kind of similar marketing effort, we wrote a formal, kind of slightly hokey agreement with Ron Khachigian. Have I mentioned this?

Lage: You mentioned him last time, but—

12-00:30:52

Graff: Khachigian's brother is a very prominent Republican national consultant, political consultant.

Lage: And active in the Deukmejian administration, wasn't he?

12-00:31:01

Graff: Deukmejian, Wilson, Reagan, all of them. He's one of the big California Republican big shots. But Ron was kind of a major player in the Berrenda Mesa—B-E-R-R-E-N-D-A—water district. It's part of the Kern County Water Agency. And he was trying to move water out because their trees were getting too expensive to maintain. And so we agreed to work together, but nothing that formal ever came of it. But it was kind of an interesting thing.

Lage: But they never did make an agreement to market elsewhere?

12-00:31:45

Graff: Well, there was internal division within the district that he was in, where one of the farmers wanted to sell and the others didn't. So I never got into the details. One of the things about where I sat, and environmentalists sit more generally, is at best, you're going to get fragmentary information about what's going on on the other side. So you do the best you can.

Lage: And you have fragmentary influence, probably, on what goes on on the other side.

12-00:32:31

Graff: Yeah, you can. It varies. And then I wanted to talk about Hoover. Hoover's the one thing that's sort of more electricity than water; but Hoover's a fun story anyway, because it does involve water projects. Barbara Boxer got elected, I think, in 1982 or '4. Must've been '2. And in her first term, or her first few months, she cast what was considered by the LCV [League of Conservation Voters] as a negative environmental vote. Have I talked about this already?

Lage: You've referred to it, but we always said we'd come back to it.

12-00:33:26

Graff: Okay. So she came back to San Francisco and she had sort of a come-to-Jesus meeting with her local constituents. And as she left the room— I can't remember whether it was she or Sam Chapman, her chief of staff said, "If there's anything we can do for you guys to make up for this, we'd love to do

it.” So I came up with this idea, well, let’s go for power marketing from the Hoover Dam. And we had been working on it already, but we didn’t have a sponsor. So we asked her if she wanted to be the sponsor. A more unlikely sponsor, there never was. Talk about someone who’s on the socialist end of things, or at least the liberal end. But they agreed to do it.

Lage: And was this popular broadly in the environmental community?

12-00:34:22

Graff: Oh, no. No. People didn’t know what to make of us.

Lage: Because she was doing it to make up for some vote that was unpopular, right?

—

12-00:34:31

Graff: Right, right.

Lage: —with the environmentalists

12-00:34:34

Graff: Well, if you’re true to principles, you want the price of power to go up. But there were also political complications. Phil Burton had just died; Sala Burton had taken over his seat. And she was working with Tony Coelho, with my help, also, to assure that if they were going to— Going back—what?—fifty years, when Hoover Dam was originally authorized, they had worked out these power arrangements. And because of the populations of the various states and localities, Metropolitan particularly, and Southern Cal Edison had picked up—and Arizona Power and Light—had picked up most of the costs of the power side of Hoover Dam.

Lage: Of building it?

12-00:35:34

Graff: Oh, yeah, the electricity elements. I can’t remember how it sorted out. But in those days, they killed people rather than stinted on money, right?, and spent the money. Anyway, the contracts were up for renewal, so that was the opportunity. They were three or four years out.

Lage: And does this mean that those three groups got most of the power from Hoover Dam?

12-00:36:01

Graff: Well, it was divided between the three Lower Basin states. But there were also conflicts within the states. Nevada was nothing in 1930. And by 1980, it was a lot more. So the way they solved that, they thought, was to upgrade the facilities. So they had more to play around with, and they gave Nevada some extra power and they had a very elaborate deal worked out. And then we came along and we said, the hell with that, let’s auction the power; this is public

power. And it caused a huge revolution. Mo [Morris K.] Udall termed it the second Boxer Rebellion.

Lage: [laughs] Now, who favored it and who—

12-00:36:51

Graff: Well, Mo Udall favored it, Barry Goldwater favored it.

Lage: What a combination.

12-00:36:58

Graff: Mel Levine favored it, PG&E opposed it, San Diego Gas & Electric opposed it. Basically, it was those that got favored it, those that didn't get opposed it.

And of course, the rural electrics all around the West; and even Jack Kemp, who had some Niagara Power, I think, in his district in Buffalo, and some folks in TVA and so on. There isn't that big a public power movement in the US. But Ralph Nader bitterly opposed it.

Lage: Now, why did he oppose it?

12-00:37:37

Graff: Because it was anti-consumer, supposedly.

Lage: I see. It was going to end up raising the power price?

12-00:37:43

Graff: Power price. The fact that it decreased tax prices was of no interest to him. There are more Ralph Nader stories, but I'll stay away from those.

Lage: [laughs] You've told me a couple.

12-00:37:54

Graff: Right. Carol Foreman was on our side, quietly; some of the slightly more moderate Naderites realized there was more than one side to this story.

Lage: Now, did Coelho and Sala Burton favor it?

12-00:38:17

Graff: Oh, yeah. No. What happened there was interesting. Seeing an opportunity, they went to Met and said, "We'll back you guys up, as long as you assure that the power you use is delivered, is used only south of the Tehachapis, and you don't use Colorado River power to move Northern California water south." So it was Valley-Bay Area alliance against Met, basically.

Lage: Oh, this is complicated.

12-00:38:55

Graff: And then when Sala got word that we were still working with Barbara, she got really ticked with Barbara. But Barbara held firm. And ultimately, George

Miller backed Barbara, so— And they had the votes, anyway; the other guys had the votes. But it was a much closer vote than anyone anticipated.

Lage: And this was a vote in Congress that had to happen for this to happen?

12-00:39:21

Graff: Congress, yeah. And then there was a similar vote in the senate, with Howard Metzenbaum taking on the Boxer cudgels. And another guy who was on our side was George Will.

Lage: The conservative columnist?

12-00:39:36

Graff: Conservative, right. Saying the Grace Commission— I don't know if you remember them. They were one of Reagan's commissions that said, we're going to change the way we do government and really get serious about free markets. And George Will wrote this very tongue-in-cheek column about, yeah, until your own ox is gored, and then forget it.

Lage: Well, it's interesting that Barbara Boxer endorsed it.

12-00:40:02

Graff: Well, she was stuck.

Lage: She agreed to it before she kind of realized the—

12-00:40:08

Graff: Well, I can't psychoanalyze her. I've always been friends with her. I think she had fun with it. Sam Chapman told me many years later that it was the most fun he ever had in the Congress.

Lage: Now, why was it fun?

12-00:40:22

Graff: Because it just shook everybody up.

Lage: It re-allied people, realigned people.

12-00:40:27

Graff: Right, right, right.

Lage: So what was the upshot of it? It passed, and power was sold to the highest bidder?

12-00:40:38

Graff: No. No, no, no, no, no. No, it lost. Oh, no, it lost.

Lage: Oh, it lost.

12-00:40:42
Graff: Of course.

Lage: Oh, I thought it passed.

12-00:40:43
Graff: No, no, it lost. [Lage laughs] No way. It was not going to pass.

Lage: It was still fun, though.

12-00:40:51
Graff: That's another segue to the changes in EDF over time.

Lage: In media?

12-00:41:04
Graff: Well, not so much in media, but in emphasis on winning and losing, rather than on raising issues. It's more subtle than that, but I think there's some sort of connection on that. Let's see, what else on Hoover? We did a joint op-ed, David Marcus and I did a joint op-ed in the *Journal*.

Lage: I think you've given that to me, perhaps.

12-00:41:40
Graff: Yeah. Oh, and then there was Pleasant Valley. Did I mention that?

Lage: No.

12-00:41:44
Graff: That's another case where—

Lage: Well, you might've mentioned it; tell me a little more.

12-00:41:47
Graff: That's one where we won big. Tony Coelho and Alan Cranston, in the dead of night, tried to expand the CVP with one of these over-the-weekend votes in the house that required twenty objectors or the bill passed. And we pointed out to Ward Sinclair, a terrific reporter at the *Washington Post*, that this was going on. I think I might've mentioned—

Lage: I think you did maybe mention this.

12-00:42:23
Graff: And the *Post* wrote a story saying Chevron was ripping off the CVP, which was half true. [Lage laughs] And the *Oakland Tribune* wrote a nice piece, too. And we were chasing George Miller all around Washington.

Lage: To get him to attend to this?

12-00:42:53
Graff: Yeah, to come out against it. It was—

Lage: All over the weekend.

12-00:43:00
Graff: It was pretty scandalous. Anyway, the final vote on our side was, I think, 423 to twelve or something like that.

Lage: Now, what was Coelho and Cranston's motivation?

12-00:44:11
Graff: Well, Coelho, it was his district—

Lage: Oh, I see.

12-00:43:14
Graff: —or his people. And Cranston was still the tool of agribusiness at that time.

Lage: Did that change later?

12-00:43:22
Graff: Well, it changed in the CVPIA.

Lage: Oh, okay.

12-00:43:26
Graff: But that was a fun little one. And the guy we worked with on that was Chet Pashayon, who was a Republican congressman in a neighboring district, whose main objection was that the Democrats were getting their pork but he wasn't getting his.

Lage: [chuckles] Politics is a fascinating game.

12-00:43:49
Graff: Yeah. He and I used to go to little Chinese restaurants near the Capitol and break bread together. And Devin Nunes is his protégé.

Lage: Ah.

12-00:44:08
Graff: Okay, so let's move on. We did some Watt and drainage and water and Andrus and Rosalynn Carter already, right?

Lage: Yes, we did.

12-00:44:20
Graff: Okay, we can skip that. So now we get to '86. And one of the big breakthrough national pieces, probably *the* big breakthrough national piece,

was written by Fred Krupp, ghost written by David Roe, which ran in the *Wall Street Journal*, essentially saying environmentalists can be free marketers, too.

Lage: And this was during the Reagan era—

12-00:44:52

Graff: In Reagan years, right.

Lage: —and there was a lot of talk of free market.

12-00:44:54

Graff: Right, right.

Lage: Now, how did that come about, this piece?

12-00:44:57

Graff: I don't know the answer to that. I assume Fred solicited it. I know I was back there with him a couple of times, but I don't know that I had a significant role in it.

Lage: But was there discussion at the national level of EDF about taking this public stance?

12-00:45:16

Graff: Yes. Fred came in at the end of '84, I think. And there was a meeting in Michael Oppenheimer's living room in Greenwich Village, where we sort of said, let's start doing things a little differently. Or at least it was argued about. And that led to a number of initiatives, including ultimately, Project 88, from McDonald's to Federal Express, the other big issues where we worked with industry.

Lage: And tell me more about this conversation in Michael Oppenheimer's place. What were the considerations and—

12-00:45:59

Graff: Well, I think basically, this group, we were all products of the sixties, really. And it was an adjustment psychologically and ideologically, to say we better have different and better strategies over time.

Lage: Were you motivated by the fact that you had Reagan as president, and so it was the political reality? Or motivated by what? The shift— [phone rings] Is that yours? [audiofile stops and re-starts] Back on.

12-00:46:39

Graff: I think there were complex motivations. And Michael's wife Lanie was probably the most unreconstructed leftist. But we all kind of came to a consensus that we had to start thinking in new ways.

Lage: And you were doing this, really, not along with your cohorts in the environmental movement.

12-00:47:04

Graff: That's correct.

Lage: Was that a conscious thought that you'll sort of distinguish yourself, or—

12-00:47:09

Graff: Somewhat conscious, I think, yeah.

Lage: And what kind of reaction did you get [phone rings] from that community?

12-00:47:18

Graff: Well, I don't remember, from the first piece. Another piece ran a couple of months later, written by Bob Jones of the *L.A. Times*, which featured Fred and Bill Reilly, from Conservation Foundation. So we weren't alone. And Lucy Blake, who later, as you know, became a MacArthur Fellow.

Lage: Yeah. And was married to Carl Pope at one time.

12-00:47:46

Graff: Was married to Carl Pope, right. So nothing is by itself in these things. But it started to get some buzz to it. So then skip forward a couple years, after the Bob Jones piece. And at a board meeting of EDF's in early 1988, which was a presidential [election] year, there was a post-board-meeting dinner at a board member's house on Central Park West. And David Roe and, I think it was [Senator] Tim Wirth and [Senator] John and Teresa Heinz and one of the senators—either Jack or Tim, I don't remember which one—went off to walk around or whatever. And they conceived of an idea of a study that they would present to the two presidential candidates, come the election—or really, the nominating conventions. And that's what they did. There was one interesting story between then— During August, while the production was going on— And by the way, they selected [Robert] Stavins as the executive director, with our encouragement.

Lage: Of this project study?

12-00:49:22

Graff: Of this project, right. And it included industry, government, academics, and environmentalists. So it was broad gauged. What time is it?

Lage: It is ten-thirty, almost. We okay?

12-00:49:47

Graff: For a little while longer. So Project 88 is underway, and it's August, and Tim Wirth is on a river trip. And his staff guy, Russ Shay, is getting cold feet, because this is more a Republican idea than a Democratic idea, he thinks. So Fred Krupp and I worked him over.

Lage: [chuckles] How'd you work him over?

12-00:50:11

Graff: Just tell him, be calm, wait for Tim to come back; it'll all work out, don't worry. And sure enough, they finally agreed on a final product, after a lot of back and forth. I did a little bit of work on it, but not a lot.

Lage: So the product had some compromise involved, probably.

12-00:50:31

Graff: Yeah, it was joint effort. And Stavins was ultimately responsible, with the senators. So they took it to the two conventions. Heinz was very enthusiastic; Wirth a little less so, although he became more so over time. Anyway, then it just sat. The conventions came and went and nothing happened. It was another report gathering dust on shelves. And I called a friend of mine, Peter Passell, P-A-S-S-E-L-L, who was an economics columnist for the *New York Times*, and he decided this was a great story. And so he wrote the first unveiling of Project 88, in October of 1988, in fact.

Lage: So this was during the campaign, right?

12-00:51:29

Graff: It's still during the campaign, yeah. And I'll tell you what, can I be excused for just a moment?

Lage: Sure. [audiofile stops and re-starts] Okay, we're back on after a break here.

12-00:51:39

Graff: So Passell wrote this great piece. When I was in Boston last week, he and Stavins were in contact. He left the *Times*, and he works for Michael Milken.

Lage: Oh, that's an interesting transition. [laughs]

12-00:51:55

Graff: It is. Anyway, so there were three pieces, for which I consider myself largely responsible, that helped to make Project 88 a reality. The second one was by Tom Wicker, who you obviously know. He and I had become somewhat friendly. He used to stay in a little hotel just off Union Square, and we used to have breakfast there periodically.

Lage: And did he come out here for a reason?

12-00:53:32

Graff: He wrote a three-piece series, which I'm sure you can find, on Bush's prospects—this was now after the election—for being a kinder, gentler president than his predecessor, on environmental issues. And one of the things that was fortunate was that both he and [John] Sununu, his chief of staff, had made promises in New Hampshire, during the primary campaigns, that they would do something about acid rain. So the piece he wrote about us was about

Mono Lake, actually, but it was part of a larger series on Bush and the environment and prospects. And then the third piece, which in a way, was the most interesting, and probably the seminal piece, was written by Phil Shabecoff, which I think you misspelled somewhere.

Lage: [chuckles] Undoubtedly.

12-00:53:35

Graff: It's S-H-A-B-E-C-O-F-F. And he was the main environmental correspondent for the *Times*. So these were all *Times* pieces. After the election, most of the other major environmental groups had put together something called the "Blueprint for the Environment," and with great hoopla, had presented it to the president. And it was basically of little or no interest to Boyden Gray, who was one of the president's main advisors on these kinds of issues.

Lage: And what tack did that take?

12-00:54:21

Graff: It said, do this on endangered species; do that on water; do that on air; do that on toxics. It was a laundry list, basically, approach. All the stuff was good stuff, basically. But not exactly the ideology of even the somewhat more moderate Bush, compared to Reagan. Anyway, unbeknownst to Fred Krupp, I talked to Phil. And I said, "You could make this a lot more interesting story if you contrasted the blueprint with what was done in Project 88." And he bought into that approach. And so he wrote a story—I can't remember whether it was December first or second of '88—and that was the approach he took. And at the last minute, he called Fred and asked Fred, do you agree, in general, with how I'm approaching this? And I did not hear that conversation, but essentially, Fred bit the bullet and said yes. And it caused all kinds of consternation. The rest of the environmental movement felt he'd undercut their yeoman efforts over many months.

Lage: So what was Fred agreeing to? He'd already signed on to Project 88.

12-00:56:02

Graff: Well, yeah, but so had some of the others, I think, nominally. I don't remember that exactly. And the other thing I don't remember is, I know on that date, or the day before or the day after—I think it was on that date, because I think we hadn't read the story yet—we had a strategic meeting in the New York City office, about what we were going to do about Bush I, Bush 41, and agreed that we would try to make the Project 88, the acid rain stuff, work. And our two main substantive people for that were Joe Kaufman and Dan Dudek. And I think to this day, they think they thought the whole thing up.

Lage: The whole Project 88 approach?

12-00:56:56

Graff: Well, yeah, and the acid rain and the whole thing.

Lage: Now, was Project 88 focusing on acid rain? Or did it also encompass a whole—

12-00:57:02

Graff: No, no, it had a bunch of other issues. But it was the one that it became known for.

Lage: And was it using this— It introduced the idea of cap and trade, didn't it?

12-00:57:12

Graff: Cap and trade, right. It's the first—

Lage: Was it using that in various aspects, like water and—

12-00:57:17

Graff: Yeah, but there's too much sloganeering that goes on, right? Nothing, even acid rain, was exactly cap and trade. The big reason—well, *a* big reason—cap and trade worked was that it was still early. And the economic interests kind of hadn't quite figured out how it would play out for each of them. Plus low sulfur coal became available in the West, which brought the cost way down.

Lage: And so there are many complications—

12-00:57:51

Graff: So there are other things that came up, too, yeah.

Lage: Well, we could go in two directions, to just discuss this a little further. And one is the relationship of the rest of the environmental community, and the other is how the Bush administration, whether they picked it up or—

12-00:58:04

Graff: [over Lage] Yeah, I don't want— It's not my thing. There's lots of other people who can now speak to that.

Lage: Into the—

12-00:58:10

Graff: Bush administration, yeah.

Lage: Yeah. You didn't have a tie to Boyden Gray or anything?

12-00:58:15

Graff: No, I didn't personally, no. Although he was around my time in college.

Lage: But what about how this played out in terms of your relationship with the rest of the environmental community? Or does that matter?

12-00:58:28

Graff: [over Lage] Well, you mean me personally, Tom Graff?

Lage: No, to EDF, the organization. You said it created some animosity.

12-00:58:41

Graff: Animosity comes and goes, opinions change. NRDC had tried to buy us, basically. [interruption—tape restarted]

Fred's personality can be prickly. But I think he's kind of gotten along reasonably well with most of the leadership. Some of the foundations got tired of fragmentation among leading environmental groups, and tried to enforce some unity. So the Green Group emerged. I don't remember exactly when, but probably in the early nineties. And as far as my personal connection to this is concerned, the one great advantage— By the way, I didn't mention that I had considered running for his position back in 1984, when there was a change in transition—

Lage: For [executive director of EDF]. Not really *running*, would it be?

12-00:59:51

Graff: Well, you know how it is. Get tapped on the shoulder. But Sharona and I decided— We had had kids in '82 and '84, and we didn't really want to move to New York and deal with grandparents. And it would've been hard work, and I'm not that good a fund raiser. As it turned out, I much preferred coaching soccer later and running marathons. Well, I had run most of my marathons by then, but— So we didn't do it, and I'm glad we didn't. And then as time went on, Fred—well, I was going to say slowly but surely, but probably not so surely; slowly, quickly; slowly, surely; quickly, not so quickly—consolidated his power and influence in the organization. And to his credit, probably, made it much more of a top-down organization than a bottoms-up one, as it had been in my early years.

Lage: In your years, you were kind of a free agent, it sounded like, out here.

12-01:01:04

Graff: Right, right, right. And I had a kind of a unique position because I'd been there a long time. So I was given a fair amount of running room, all the way to the end, really. Although there was a weird moment. We had a big strategic planning exercise, I think in '95, plus or minus a year. And I was kind of, almost without choice, named transportation program manager. I think I might've mentioned that already.

Lage: You did, and I've been curious about it.

12-01:01:39

Graff: Yeah, well, I think they decided water—or even water and what ultimately became water, land, and wildlife—nationally, was just too big a deal. And I didn't really want to be an administrator. So it was probably the right

decision. But like any NGO or corporate re-org, there are always loose ends and rough spots and so on. And I think my biggest regret since '92, since Miller-Bradley, is that I was unable, in various different ways, to protect the people that I really cared about in my office.

Lage: Protect them? Keep their jobs?

12-01:02:25

Graff: Keep their jobs. None of them fired, really—well, one was sort of fired—but they just sort of saw the handwriting on the wall, and each for different reasons, slowly crept out the door.

Lage: And so why did they fit well with your operation, but not so well when it became a more top-town?

12-01:02:51

Graff: Well, you saw the YouTube thing, right?

Lage: I didn't see the whole thing, I saw part of it.

12-01:02:56

Graff: Oh, you didn't see the whole thing. Well, I thought Deborah Moore got it best. I can't remember exactly what she said, but it had something to do with it's not just what you do, but how you do it. Something like that, I don't know.

Lage: Yeah. So the style of the organization didn't fit.

12-01:03:19

Graff: Style, style, right, didn't quite fit. But here I am in hospital, with who knows how many days or weeks or months left. And they've treated me extremely well in my dotage—unfortunately, too-young dotage.

Lage: Yes.

12-01:03:46

Graff: So I'm not complaining. And I think there are plusses and minuses when you're— One of my old mantras was guerrillas can get a lot done. And then guerrillas sometimes turn into city-states or states, and then they screw up, too.

Lage: Well, it is a kind of an evolution, a natural evolution of an organization.

12-01:04:12

Graff: Right, it is.

Lage: So it's become larger, more bureaucratized?

12-01:04:16

Graff: Right, right. And I see it—

Lage: And the free thinkers and free operators are—

12-01:04:21

Graff: They sort of marginalize themselves, in a way. I saw this so clearly in— I hadn't seen a lot of my old contemporaries from college days and law school days until this last trip. And whether they're doctors or they're business people or whatever they are, they all have some version of this going on in their lives.

Lage: Do you think it was the era they came out of? They came out of a kind of freer operating era, or just—

12-01:04:58

Graff: Well, it was the sixties, I don't know.

Lage: That's interesting. So you must've had some good conversations about things like that.

12-01:05:06

Graff: Oh, yeah, yeah. Not long enough conversations, but good ones. And now, of course, some of the other old-timers in other organizations are leaning on me to bring back the old days. And even the politicians. I've been emailing with Phil Eisenberg. And he's praising my replacements for going along with the program.

Lage: For going along with the peripheral canal?

12-01:05:44

Graff: The new program, yeah. Which I have not—

Lage: Did you say he was praising them?

12-01:05:51

Graff: Yes. And if I still had to make that call, I don't know what call I'd make. Partly because I think the financial stuff is ridiculous. And I'm somewhat jaded about— You're never going to get the line-up of environment-comes-first perfect, even though in theory, in law, it comes first. But even then, as I pointed out earlier about marketing and all the other considerations, there's lots of countercurrents and it's too— You just never know what's going to—

Lage: You can't predict the future, how it'll—

12-01:06:39

Graff: Right, right.

Lage: —pan out. Just to finish up with this talk and thinking about EDF, did the shift— I assume it was not really a shift; it was a gradual evolution towards the market approach, but they made it a more public stance.

12-01:06:57

Graff: Well, I think the best policy, the best water policy on marketing that ever has made the light of day was in CVPIA.

Lage: Right. Well, we want to talk about that.

12-01:07:12

Graff: Right. There are really two issues, too. There's marketing and there's subsidies. And I negotiated with Stuart Somach over increasing the price of water and power from the CVP. And he agreed. And that stuck in the final bill, although I still remember Dan Beard saying, "You're never going to get this in the final bill."

Lage: And Somach was representing—

12-01:07:41

Graff: Well, that also changed. He was abandoned at that time by the San Joaquin farmers, and he ended up with the Sacramento farmers.

Lage: Oh, that's a different—

12-01:07:52

Graff: He and [Victor] Fazio, both of whom I consider statesmen. And Fazio lost his seat over it, I think. And actually, I'll tell you something which I've debated for years whether to disclose or not. During the late stages of CVPIA, there was an article in the Woodland newspaper—talk about an obscure newspaper—about Fazio and the CVPIA. I don't remember exactly what it said. And I didn't recognize the reporter's name.

Lage: And was it critical or—

12-01:08:33

Graff: I don't remember what the— I think it was just a story, it wasn't a pro or con story. But I sent him, in an unmarked envelope, some kind of article, statement, I don't remember, pointing out some things that would be helpful to him in understand—

Lage: The reporter?

12-01:08:55

Graff: The reporter. And the day that Fazio met with the local environmentalists in Davis, which was the heart of his environmental constituency—he mainly had a rice/conservative constituency—it was pointed out that he was kind of like tilting towards the rice guys. And I think that hurt him electorally. I think he won that election and then lost the next one.

Lage: So you think what you pointed out to the reporter—

12-01:09:26

Graff: Made a difference, yeah. And I feel guilty about that. He's since become a consultant to EDF on climate change.

Lage: Oh, that's very interesting.

12-01:09:37

Graff: So I don't feel so bad. And then he and I have always stayed friends, actually. But I never told him I did that. And I really don't like to be underhanded, if I can help it. I'm not quite as bad as some of the other politicians these days.

Lage: Right. You're not a politician.

12-01:09:55

Graff: That's the reason, I guess.

Lage: I want you to talk more about CVPIA. You'd said you had some other stories to tell that aren't in the record.

12-01:10:06

Graff: Well, the big one—

Lage: But should we save that? Are you getting tired? Should I come back?

12-01:10:11

Graff: No. No, no, let's finish that.

Lage: You want to finish that, okay.

12-01:10:12

Graff: Let's finish that. I hadn't prepared to talk much about that; I thought we were pretty much done. There's a lot in the other volume.

Lage: Yeah, there really is a lot in there, but I thought you'd said— Well, for instance, we haven't discussed how it's worked out.

12-01:10:28

Graff: Well, a couple things on that. I had notes on that. [doors opens, brief discussion with entrant.] Yeah, a couple things. One is that the Fish and Wildlife— Oh, here it is, yeah. So the '93 election comes along, '92 election.

Lage: CVPIA passed in '92, right?

12-01:11:03

Graff: The weekend before the election. And in the YouTube [video], there's Bill Bradley kind of saying, we won, kind of thing. But we made some errors. First of all, we thought we won, the bill's passed, everything's fine. And we didn't kind of like stick with it. And that's been a failing of EDF's, or was in the early days. Zach and David Roe and Dan Kirshner and David Mastbaum did *great* work on the electric utilities. And then once we killed Allen-Warner

Valley and Sun Desert, they decided there were other, more interesting things in the world to do. And I think the same phenomenon happened with CVPIA. In order to make it work, you had to get the Fish and Wildlife Service to take seriously the enormous new mandates that it provided. And they just weren't, certainly intellectually, up to it.

Lage: The mandate for environmental protection.

12-01:12:18

Graff: Yeah. They were focused on biological opinions, which were effective; and litigation, I think, in the last fifteen years, has probably been our savior—to the extent we have a savior. And that's one of the reasons for the debate currently over what's important to put in legislation and what's important not to.

Lage: And what's the nature of that debate?

12-01:12:49

Graff: Well, if you can rely on the biological opinions and the ESA [Endangered Species Act, which is in theory a trump card, then you don't need a comprehensive environmental package.

Lage: In each piece of legis—

12-01:13:02

Graff: Right.

Lage: I see.

12-01:13:03

Graff: And Eisenberg is very much of the view that you need to expand the purposes and the ways of getting there; you can't just rely on one bullet.

Lage: Like ESA.

12-01:13:19

Graff: Like ESA.

Lage: Because that can be overturned.

12-01:13:21

Graff: Well, by God Squad or by new legislation or by whatever. But it's not just what's on paper; it's kind of like the ethos.

Lage: Well, what about the ethos of the Fish and Wildlife Service? Were they on board?

12-01:13:40

Graff: They were, in theory, on board. But then Panetta was chief of staff for Clinton, Babbitt was secretary. And Babbitt commissioned Betsy Rieke,

assistant secretary from Arizona, and Felicia Marcus, region nine EPA administrator, to cut a deal with Pete Wilson, going forward. One of the things that have been hung up— I forgot to mention the Racanelli decision in '86, which also was a great decision.

Lage: Say what that was again.

12-01:14:16

Graff: Well, basically, it mandated the state water board to come up with new water quality standards for the bay.

Lage: Right. Okay. So that ties into the—

12-01:14:26

Graff: But Pete Wilson had tubed that, threatening Tom Maughan's reappointment. And a lot of the left-wing criticism now comes from people who think that should've been the linchpin of the next round of good things to happen. And here we are twenty-three years later, and we still haven't got anything. But so that's one big failing, was we didn't get the Fish and Wildlife Service to really take hold of what the new mandates were that they got.

Lage: And what would have happened if they'd taken hold? What would they have done?

12-01:15:19

Graff: Well, they would've produced better standards for delta outflow, mainly.

Lage: I see. Okay.

12-01:15:25

Graff: I mean, It's simplified, by far. Anyway, so then I think there was pretty clearly a Clinton order, or a Clinton administration order, to Babbitt, which was passed down the line: we've got to cut a deal with Pete Wilson. Which led to the Bay-Delta Accord in 1984.

Lage: And is that tied in to CVPIA, that—

12-01:15:52

Graff: Somewhat. Yes.

Lage: Because we started out by talking about how you didn't sort of birddog CVPIA enough.

12-01:16:01

Graff: Right. That's right.

Lage: And is this all one story?

12-01:16:04

Graff:

Yeah, it's one story. And you only have so much time and energy and people and stuff. And then, of course, came the Gingrich revolution and election. And there was a frantic scramble to get the accord signed on the 15th of December, 1994. And at the same time—and this is one of the few things I'm bitter about—the water agencies, at the same time, were backdooring us, having separate, essentially secret—not absolutely secret, but excluded—negotiations on something called the Monterey Agreement, which reformulated the State Water Project. And our idea when we passed CVPIA was we would get the CVPIA's share of water and money, and then we would get the state's, and then we would get the locals'. And the State Water Project people cut us off at the pass.

Lage:

So they didn't include the environmentalists in their—

12-01:17:16

Graff:

Right, right. Not only didn't they include, they excluded. And we fought to get in, and they wouldn't let us in.

Lage:

And what were they working out?

12-01:17:26

Graff:

They were working on a way of reallocating the State Water Project's water so more of it would go to ag and less to urban. And I've never understood why the urbans agreed to that.

Lage:

Were they in on it?

12-01:17:44

Graff:

Oh, yeah. Particularly the Met, Woody Wodraska and Tim Quinn. And Tim spins many a story.

Lage:

And this was under Wilson's water board.

12-01:17:57

Graff:

Well, Wilson and Babbitt.

Lage:

Wilson and Babbitt.

12-01:18:00

Graff:

So the negotiators formally were Rieke and Doug Wheeler, with whom we later had great relations on Hetch Hetchy.

Lage:

But in this, he cut out the environmentalists.

12-01:18:15

Graff:

Right. And this also relates to the foundations world, because Michael Mantell was his number two. And Michael did a lot of the work, too. And so it went from Hal Harvey, who didn't like our transportation work, and Mantell, and

Joe Caves, who was kind of proprietary about Sacramento lobbying and others. And they steered us away from doing policy work, towards doing transactions work, which is what Nature Conservancy does. And Mike McCormack, in his interim between being California DNC and national DNC, was part of that group. And he introduced a young lawyer in our office named Dan Suyeyasu to a guy named John Grant and his wife Dagny, who had a ranch on the Tule River. And we tried to make a transaction happen on the Tule River—which was a lot of fun, but totally irrelevant to anything major in water in California.

Lage: Now, I'm kind of [laughs] lost. How did this negotiating that Doug Wheeler and Mike Mantell did with the farmers and urbans affect— What's the connection with steering you into transaction work, steering EDF into transaction work?

12-01:20:02

Graff: When I say transaction, I mean a real sale of water from point A to point B. But at a miniscule scale, nothing having to do with the big stuff.

Lage: But how did they steer you into that? I don't get it. Funding opportunities? [laughs]

12-01:20:25

Graff: Yes.

Lage: If we had a video, we'd see your gesture.

12-01:20:29

Graff: Yes. And there are many stories around how that happened. I was friends with most of these people, but I did feel like for all their professions of respect and so on, they had their own ideas about how to make things happen. And this led to the series of bond issues that raised a lot of money for the environment, but didn't do anything *for* the environment, really. That's not a fair way of putting it.

Lage: These are the various big propositions?

12-01:21:10

Graff: Right.

Lage: The Big Green and—

12-01:21:12

Graff: Well, Big Green is another story. I think I told you that I opposed Big Green.

Lage: Yeah, you did mention that, I think.

12-01:21:20

Graff: Big Green was earlier. That was 1990.

Lage: That was before.

12-01:21:24

Graff: That was 1990. Listen, I think I better call it a day.

Lage: Yeah, I think we will come back and revisit some of this.

12-01:21:29

Graff: Okay, well, hopefully. And if not, you've got enough.

Interview 10: October 1, 2009

Begin Audiofile 13 10-01-2009.mp3

Lage: Okay. Today is October 1, 2009, and we're in session ten of the interview with Tom Graff. This is audiofile 13. Okay, Tom. You had some things that you were— Hold on, I want to pause it for a minute. [audiofile stops and re-starts; some Graff remarks not recorded] Okay, we're back on now. We missed some when we were interrupted here. Let's back up; you were giving a summary, highlighting turning points and people that were particularly important. Would you mind—

13-00:00:38

Graff: Well, that's a way back to the beginning.

Lage: I know. Well, you don't need to go way back, because you mentioned the early people in the office that we've already talked about quite a bit. I'd like to have you repeat what you said about third-wave environmentalism and how it came about and how it was important.

13-00:01:08

Graff: Okay, turn it back on.

Lage: It's on now, yeah. So with that introduction, I'm going to have you start on that again.

13-00:01:15

Graff: Okay, so the Passell piece, the Shabecoff piece, which got Fred to say that the EDF approach was different from the Blueprint [for the Environment]. And Tom Wicker's pieces, one of which was about Mono Lake. And then later *Time* magazine did a Mono Lake piece, as well. So that was a segue in the eighties, late '88, early '89.

Lage: But what I'd like you to repeat, that you told me about [when the recorder was off], was how you saw the other environmental groups. The first wave, the second wave.

13-00:01:55

Graff: Well, I thought they were conventional.

Lage: You mentioned that the Sierra Club and the Wilderness Club, the John Muir tradition, was kind of the first wave. And the second wave was?

13-00:02:07

Graff: Rachel Carson.

Lage: Rachel Carson and organizations that came out of that, and you could think of EDF as really coming out of that impulse.

13-00:02:15

Graff: Well, they all blend.

Lage: And then what was the impetus or the idea for a third wave environmentalism?

13-00:02:26

Graff: Well, it was an idea of using markets and economics to actually make change. If you listened to Bill Bradley's comments on YouTube, there's a little bit of that. Which reminds me, way off point, I don't know whether you're going to use my sister's book, but I hope it's available.

Lage: I have to be sure that we get a copy of it to the Bancroft.

13-00:02:59

Graff: Yeah, I have copies.

Lage: Right. I had asked you in the part that we didn't record, if this embrace of third wave, EDF being a third wave organization, was partly a strategic effort to strengthen the organization, as well as serve an ideological stance.

13-00:03:21

Graff: Yes, I think so. Niches are good. If you're the same as everybody else, it's harder to distinguish yourself.

Lage: Right. And there were a lot of bigger organizations and—

13-00:03:36

Graff: Right.

Lage: So that key change was about '86, and that involved Project 88, two years later—

13-00:03:48

Graff: '86 to '90. '90 is when the Clean Air Act Amendments passed.

Lage: Right. Which involved cap and trade and market-based approaches. So did your organization—I know it wasn't *your* central role, but did EDF have a strong role in the Clean Air Act of 1990?

13-00:04:10

Graff: Very much. And I always kid Joe Kaufman and Dan Dudek, who think they invented it. But in fact, Fred Krupp and David Roe and the Heinz and Wirth wives were the main sort of instigators—

Lage: The wives?

13-00:04:42

Graff: —because they were on our board.

Lage: Oh, yeah. Teresa Heinz was on your board?

13-00:04:47

Graff: Yeah.

Lage: And Tim Wirth's wife?

13-00:04:50

Graff: Wren Wirth, yeah.

Lage: Oh, I didn't realize that.

13-00:04:53

Graff: Yeah. So that was like '88 to '90. And then meanwhile, we sort of segued into— You asked about CVPIA. '89 was the year of Nevada, when Harry Reid and Bill Bradley did a dry run on Nevada.

Lage: And what do you mean by that?

13-00:05:30

Graff: Well, they passed a bill to protect the terminal lakes in Nevada.

Lage: I see.

13-00:05:36

Graff: Pyramid Lake and Walker Lake. And Truckee, of course, which is mainly in California, was part of that.

Lage: And that was sort of a proving ground for CVPIA?

13-00:06:00

Graff: Right. And David Yardis, who's my very close friend and colleague, was very, very much involved in that. And John Krautkraemer was doing something parallel called the Three Way, which involved the ag, urban, and environmental stakeholders in California. But there was no real ability by anyone to enforce anything. It was just a lot of talk. And I felt badly for John somewhat, because he was talking and we were doing, essentially.

Lage: Was he talking to these three groups?

13-00:06:48

Graff: Right, right.

Lage: But without a legislative framework, sort of?

13-00:06:63

Graff: Right. He later came on, in '94 and '4, to work on the Bay-Delta Accord, and stood up there when the Bay-Delta Accord was announced on December 15, 1994. And then he died a year later, tragically.

Lage: Well, was it his thought that if people talked and came to agreement, you didn't need the legislative clout?

13-00:07:20

Graff: Yeah. It was a little more subtle than that. He was hoping something would really happen. But we were all working together, basically. So that was '93-94. And I felt badly in that time, because we made a couple big mistakes. The most important of which was we thought, oh, we passed Miller-Bradley; reform is upon us. And the fact of the matter is a law does not make a reform.

Lage: Right.

13-00:08:00

Graff: You have to really work at it.

Lage: Now, did you feel that way yourself? Did you think, oh, it's done now?

13-00:08:05

Graff: Yes, I think so. I'm pretty sure I did. We made the same mistake fifteen years earlier on the electricity stuff. We had a formula. It was a great formula. And then David and Zach got tired of it. And David Mastbaum and Dan Kirshner got tired of it.

But we missed an opportunity. And then we got backdoored, when basically what happened was Wilson wanted to run against Clinton for president in '96— And then he had that voice issue, and so he couldn't do it.

Lage: But Clinton also wanted to make a deal with Wilson, it sounded like, after CVPIA.

13-00:09:08

Graff: Right.

Lage: Was that to sort of undercut his presidential—

13-00:09:12

Graff: Undercut Wilson?

Lage: Yeah.

13-00:09:14

Graff: Somewhat.

Lage: But did Clinton give away the store by making a deal with Pete Wilson?

13-00:09:22

Graff: Well, he got Babbitt, who got Betsy Rieke and Felicia Marcus to cut a deal, basically. And then we were ambivalent for two years. And then the Gingrich revolution came around and we decided, this is the best deal we're going to get, so we're going to get—

Lage: And this is CVPIA we're talking about.

13-00:09:48

Graff: Post-CVPIA. Yeah. CVPIA is by far the most seminal water project, in the West anyway, in history. I don't know about Everglades or Chesapeake or Boston Harbor.

Lage: Now, why do you consider it seminal? What are the key— I know we have this extensive oral history, but what is the overview.

13-00:10:16

Graff: The two seminal pieces was that water got increased in price and power got increased in price. And that's unheard of in the history of California water. And I always attributed that to Cranston checking out after, whatever it had been, sixteen years of carrying the water for the water buffaloes.

Lage: [laughs] For the ag interests?

13-00:11:00

Graff: Yeah. He told Bradley, you do it. You can find me in the shoebox in my corner office.

Lage: [laughs] Interesting. So the price for water and energy were increased. Is that the key thing? Or were the environmental protections—

13-00:11:19

Graff: Well, there's a lot to it besides that, but those were, to my mind, the extraordinary developments.

Lage: And what are the effects of increasing the price of water and energy?

13-00:11:42

Graff: Well, the water becomes more expensive, so it's used less wastefully. And the power becomes more expensive and it's used less wastefully.

Lage: And does it also facilitate transfers in marketing?

13-00:12:02

Graff: It can. It can. We can come back to that. Let's see.

Lage: So last time, we ended with some of the happenings in California after CVPIA, and your feeling that the environmentalists had been cut out of the process. I didn't fully understand that.

13-00:12:34

Graff: Well, the big cut-out was Monterey. Do you know the Monterey Agreement?

Lage: We talked some about the Monterey Agreement. And it was just between the various water contractors, basically?

13-00:12:46

Graff: Yes. The State Water Project and the state contractors.

Lage: Did the feds have any role in that?

13-00:12:58

Graff: No. Our mistake—one of our mistakes—was thinking that because the feds had agreed to increase their price of water and power, they should be encouraging the state to do the same, and eventually the locals. But they let it go.

Lage: And the state didn't increase.

13-00:13:21

Graff: No. I mean, miniscule.

Lage: I've heard the Monterey Agreement just *blasted* as kind of a giveaway to the ag interests. Is that—

13-00:13:32

Graff: Right. In different ways. Yeah. Public Citizen made a big fuss about it, PCL made a fuss about it. The concerned citizens of Santa Barbara County—not quite the right name—made a fuss about it. But they hired a facilitator who was a tough guy, and he just kicked everybody else out of the room. So they just did what they wanted. And there was a deal, I always thought, behind the scenes, between Wodraska, the MWD general manager, and Babbitt to cut that deal, as an offset to working out Miller-Bradley.

Lage: Oh. But you don't know that for certain, just—

13-00:14:31

Graff: No.

Lage: So Babbitt was in on this Monterey thing, also?

13-00:14:35

Graff: Yeah. Babbitt was basically, on issues like this, a bad guy.

Lage: Really?

13-00:14:42

Graff: He ended up with Keith Brackpool [chair and CEO of Cadiz, Inc.].

Lage: Who is?

13-00:14:46

Graff: Who is a very sleazy water manipulator. And he hired Babbitt to go do water deals in Egypt.

Lage: Oh, this was after Babbitt retired.

13-00:15:05

Graff: Many years later. And David Hayes [Babbitt's deputy secretary of Interior] is involved in that, too. Or was.

Lage: So there's a lot of power in the water [laughs] community.

13-00:15:13

Graff: Right. And Cadiz [Inc.] was also tied in with Gray Davis, and more recently, with Villaraigosa and with Schwarzenegger. He [Brackpool] is not a guy you want to turn your back to.

Lage: And tell me again who he is.

13-00:15:40

Graff: He's a water entrepreneur.

Lage: Is he connected with big ag in California?

13-00:15:47

Graff: He bought out Sun World way back, and has water holdings, but they're sketchy water holdings. And he can never quite seem to put a deal together that works.

Lage: So he has bought land, basically, for the water rights.

13-00:16:13

Graff: Right. Yeah. But again—

Lage: So this is one of the dangers of water marketing, in a way.

13-00:16:18

Graff: Right. It can be. In fact, I want to get to a related item on that, if we have time later today. So that's Cadiz.

Meanwhile, we were doing energy work. And this ties into foundations, which you expressed an interest in earlier. We hired a guy named Michael Cameron, who went to work on transportation issues in Southern California. Sort of a semi-compete with NRDC, which moved in earlier down there. And he worked with Dan Garcia, who was a prominent city planner, winner of Purple Hearts, who worked for Bradley and for Yvonne Burke and others down there. Is an interesting guy. And then Robert Garcia was another Guatemelan refugee who worked with us on transportation issues in L.A., as did Pat Russell, a city councilwoman, and Marilyn Ryan, a state assemblywoman.

Lage: And were these combined with some attention to sort of social justice issues, did you tell me?

13-00:19:09

Graff: Yes. Combination, originally, of efficiency. And then we decided we needed to embellish that to look into social justice issues, too. Meanwhile on the

funding front, we also started working in transportation in Northern California. One of our projects was to oppose the putt-putt train from Marin to Sonoma.

Lage: What did you call the train?

13-00:18:49

Graff: Putt-putt.

Lage: Putt-putt? I'm sure that's not what the supporters called it.

13-00:18:53

Graff: It's probably not.

Lage: [laughs] I think we did talk about that. And some of the pricing mechanisms that Kirshner worked on.

13-00:19:02

Graff: Yeah. We were trying to make congestion pricing work on the Novato Grade. And we had some supporters— Steve—

Lage: By collecting tolls? Would that be it?

13-00:19:14

Graff: Tolls, yeah. Steve Kinsey [Marin supervisor] was interested. Pam Lloyd was interested, another one of our early funders. Great lady.

Lage: And where was she?

13-00:19:24

Graff: She was in Marin.

Lage: A private funder or a foundation?

13-00:19:27

Graff: Private funder.

Lage: Private funder.

13-00:19:29

Graff: I think her father was the first general council of the Parks Service. George Wright, I think his name was. And her husband built the Getty, or was a construction supervisor for the Getty. Anyway, Hal Harvey, who by then was head of the Energy Foundation, wanted the putt-putt.

Lage: I see.

13-00:20:03

Graff: And then he transitioned to Energy Foundation. Or maybe he transitioned from Energy to Hewlett. And then Packard and Hewlett and Michael

Mantell— And all the bonds that came up after CVPIA were part of this group. Joe Caves, Leslie Johnson, Steve Johnson, they all wanted money for habitat, basically.

Lage: So all the statewide bonds grew out of—

13-00:20:38

Graff: Well, they grew out of one phone call.

Lage: Tell me about that.

13-00:20:45

Graff: A phone call I got from Elliott Diringer, who was a *Chronicle* reporter, saying that Tim Quinn and Tom Clark had said, have we got a billion dollars for you, to help with the environment on water. So I thought for about two seconds, and then in probably a mistaken moment, said okay.

Lage: Now, elaborate a little bit. You got a call from a reporter, right?

13-00:21:34

Graff: Right.

Lage: And was he relaying a message from—

13-00:21:39

Graff: I'm not sure whether he called me; I think he did call me. And I think they called me, too.

Lage: Tim Quinn, who's with—

13-00:21:46

Graff: Metropolitan.

Lage: And the other person was?

13-00:21:51

Graff: I think Steve Hall of ACWA.

Lage: Which is?

13-00:21:56

Graff: Association of California Water Agencies.

Lage: Okay. So the water agencies—

13-00:22:01

Graff: Their theory was, better the public pay than that they pay.

Lage: I see. So they were going to help sponsor bond issues for—

13-00:22:12
Graff: Right, for broader stuff.

Lage: Broader stuff related to water and environment?

13-00:22:18
Graff: Right.

Lage: Which isn't really the marketing approach.

13-00:22:25
Graff: Right. And then we got, on top of that, another \$430 million from the feds, from Garamendi and McGill. McGill was working for Feinstein at the time.

Lage: Now, when you say you got the money—

13-00:23:01
Graff: Yeah, Congress passed the money.

Lage: Oh. For what, though?

13-00:23:05
Graff: For environment.

Lage: I see.

13-00:23:07
Graff: For habitat.

Lage: Yeah. When you say we, we have to distinguish. Is it EDF or is it—

13-00:23:12
Graff: Right. No, Congress.

Lage: Congress giving money for habitat. And then also, we had several bond measures that—

13-00:23:20
Graff: Right, then they started stacking bond measures every two to four years.

Lage: And does that mean that the water agencies you mentioned, Met and ACWA, supported those measures and—

13-00:23:31
Graff: Yes. And they kept telling the storage people, the Feinsteins and the Schwarzeneggers, that they really wanted storage, but they never quite delivered.

Lage: And now they're complaining that the environmentalists got all they wanted, but they aren't willing to go for the storage end of it.

13-00:23:56

Graff: Right, right. Right. Which was pretty—

Lage: Is that fair enough? Is their argument fair enough, or do you disagree?

13-00:24:05

Graff: I disagree. Mainly because they can't afford it.

Lage: The state?

13-00:24:12

Graff: The water users.

Lage: Oh, oh, oh.

13-00:24:14

Graff: They don't need it, so why should they pay for it? It's much subtler than that, but—

Lage: You're saying you don't think the storage is needed?

13-00:24:25

Graff: No.

Lage: Well, they sure act like they need it.

13-00:24:30

Graff: They may believe.

Lage: But can they do it through better conservation or—

13-00:24:36

Graff: Well, no. The people who have water cheap don't want to conserve because it's— I'm starting to lose it.

Lage: It's not worth their while.

13-00:25:01

Graff: Right. And for those who have water expensive, they might be able to add on a little at the margin, but not build massive storage structures that cost a lot of money. So that's part of the problem. And one of the ongoing issues— The Westside now is all up in arms, we're short on water; our farm workers are going poverty stricken, et cetera. But the most recent deal is a deal cut by Stewart Resnick, one of California's richest men, wanting to buy water for a subdivision from the Westside.

Lage: A subdivision down in Mojave, is it?

13-00:26:00

Graff: Mojave, right.

Lage: [laughs] What kind of place is that to set your subdivision?

13-00:26:07

Graff: Subdivisions are valuable. More so than cotton or grass or something, whatever else they grow. So the whole question of what's the long run— My view, in the long, long run, is that growth will triumph over cotton, alfalfa and rice, no matter what all the rhetoric says.

So then related to this, you asked about EDF's strategic planning. We've changed a lot, or we had changed a lot. By the mid-1990s, we'd gone from moderately wealthy interested people to mega-wealthy, somewhat interested people.

Lage: I see, as your funders.

13-00:27:31

Graff: Right.

Lage: But a lot of individual funders, as you've described them.

13-00:27:34

Graff: Yes, and that's a factor of the society at large, also.

Lage: True. Did you get venture capitalists and that type of people?

13-00:27:43

Graff: Yes. Basically, two main sources of money for EDF: New York investment capital and Silicon Valley capital.

Lage: So you benefited a lot from the economy, trends in the economy.

13-00:28:00

Graff: Right. Do you mind getting me a little more water, please?

Lage: No. I'll put it— [audiofile stops and re-starts] Okay, we're going again.

13-00:28:11

Graff: And in the course of that change in both funding and relative top-down management, the California office diminished in stature.

Lage: Even though you had the Silicon Valley funding? You'd think that would've been interested in California.

13-00:28:39

Graff: The New York people kept a stranglehold on the California funding, to the extent they could. Not explicitly, but— Well, partially explicitly.

Lage: Did the people that were tapped in Silicon Valley, we'll just say, were they tapped by people in your office, in the California office—

13-00:29:02

Graff: No, national.

Lage: The national had the fund-raising apparatus.

13-00:29:07

Graff: Yeah, right. And they squelched our development people, as well as our substantive people. And I had an unusual role, because I'd been there the longest, so I had some cachet that the younger people didn't have. And we lost a lot of great young people in the late nineties, early 2000s.

Lage: Because of unhappiness or cutbacks?

13-00:29:40

Graff: More unhappiness than cutbacks. Very few real cutbacks, a couple. There was a cutback— Hal Harvey and Michael Fischer didn't get along.

Lage: Were they both at Hewlett?

13-00:29:58

Graff: At Hewlett. I think Hal succeeded Mike. And Mantell and Caves and the Johnsons sort of took over the—excuse me—the relationships with Hewlett and Packard and Moore and the other big—

Lage: The [Gordon and Betty] Moore Foundation.

13-00:30:40

Graff: Yeah. And that was complicated, too because New York got into that.

Lage: Now, was this broader than EDF, then? Was Mantell related to EDF?

13-00:30:51

Graff: He was never really related directly. He did a little consulting.

Lage: And Harvey was not a friend of EDF, were you saying?

13-00:31:03

Graff: Well, Harvey really liked a guy named Jim Marston, in our Texas office. And he got along fairly well with Mary Kelly, also in our Texas office.

Lage: So Hewlett money went to other—

13-00:31:21

Graff: Right, went to other—

Lage: Yeah. I think maybe you've mentioned that. But I don't get Mike Mantell's relationship. Was he involved with another foundation?

13-00:31:29

Graff: He started out as—

Lage: He was with Doug Wheeler.

13-00:31:34

Graff: He was Doug Wheeler's deputy when Wilson was secretary. And then he stayed with Doug some. But he mainly tied in with Julie Packard.

Lage: Oh, I see.

13-00:31:53

Graff: And then with others. There was a lot of Silicon Valley money in those days, late nineties.

Lage: So is the moral of this story that this affected your—

13-00:32:14

Graff: It affected morale around California, which has slowly and steadily disintegrated. And I think I mentioned that they made me transportation program manager—

Lage: Right.

13-00:32:29

Graff: —which I thought was absurd.

Lage: Because that wasn't your main direction.

13-00:32:33

Graff: Right, right, right. The other guy who was involved in all this that was sort of interesting was a fellow named John Grant, who worked on something called the Tule River. And his wife Dagny was an art dealer. And they lived up in the foothills, down in lower Sequoia, and had an art collection there and stuff. And he was friendly with Steve McCormick, who was between jobs. And Steve had been close to Boswell, the older Boswell. So that was always confusing to me.

Lage: But what happened with that? You'd mentioned that EDF got involved in something having to do with the Tule River last—

13-00:33:25

Graff: Yeah, the deal never came together. A guy named—

Lage: To make a transfer?

13-00:33:31

Graff: Right. Basically, Mantell's solution was, I'll have them make little deals and get them out of the way.

Lage: So that was the kind of thing he funded or he caused to be funded?

13-00:33:47

Graff: Yeah, right.

Lage: I see. At the time, did you see that as a diversionary tactic?

13-00:33:56

Graff: Yes.

Lage: Or in retrospect?

13-00:34:00

Graff: At the time. And in retrospect, maybe. Then you asked about Hetch Hetchy.

Lage: Right. How did you get involved in Hetch Hetchy restoration?

13-00:34:16

Graff: Well, my lifeline was George Miller and Jan McKinley.

Lage: George Miller?

13-00:34:31

Graff: The philanthropist.

Lage: We have a couple George Millers happening here. And who was the second person?

13-00:34:40

Graff: Janet McKinley. She's his wife.

Lage: Okay. And they were your lifeline in terms of funding the projects you were interested in?

13-00:34:53

Graff: Well, they did two things big time. One is they funded a big report on Hetch Hetchy and related stuff, like focus groups and that kind of thing.

Lage: Now, did they do that because you thought it was important and asked them to fund it? Or did they come to you with the issue?

13-00:35:10

Graff: No, no, they came to us with the issue. He had always been a water person, and he did work at the [Bancroft] library. He decided I was a good guy. So that's how come that evolved. And he liked Spreck [Rosekrans] a lot and he loves rivers. So that's how we sort of emerged with the Hetch Hetchy project.

Lage: And this is the project to restore Hetch Hetchy, basically.

13-00:35:44

Graff: Right.

Lage: To do away with the big dam and—

13-00:35:47

Graff: Right.

Lage: And how did you feel about it personally? If he hadn't come to you, would it have been an issue that would've captured your imagination?

13-00:35:55

Graff: I doubt it, honestly. It isn't that I was opposed to it, but I thought it was a long haul and it would take many more years than I had in me. But Spreck was a total enthusiast. And he had help for Restore Hetch Hetchy with Ron Good and others, David Brower. So for, I'm guessing, a five- to seven-year period, we had a lot of money for that one project, which tided me over to retirement, basically. And I think I contributed some useful stuff. I know I contributed some useful stuff.

Lage: Right. And what was your role and EDF's role in relation to the Restore Hetch Hetchy? Were you part of the Restore Hetch Hetchy organization? Or how did you—

13-00:36:59

Graff: Well, I eventually became part of Restore Hetch Hetchy. There's a long story. We had the Harrison Ford film in there. We brought him up to the dam site, and there's some funny stories around that. The park director got all uptight about it.

Lage: Oh, really? Over shooting the film or having Harrison Ford—

13-00:37:34

Graff: Well, having Harrison Ford there and not being told, or at least not till the last minute. But realistically, if it hadn't been for that large amount of money, it would've been a much more complicated end run for me.

Lage: In what respect?

13-00:37:59

Graff: Well, just getting paid and having status and doing things.

Lage: In terms of your own organization.

13-00:38:06

Graff: Right. Yeah.

Lage: Do you think you might've lost your position with EDF?

13-00:38:14

Graff: I think that's unlikely, but one never knows. There have been layoffs in the last year.

Lage: Right. So you might've been more directed into transportation.

13-00:38:25

Graff: Well, I had quit that. I just went to Fred and said, "I'm out of here. I'm not doing this."

Lage: So you mainly, the last few years, you focused on Hetch Hetchy? Did you have anything to do with getting—is it [Donald] Hodel, [Secretary of Interior under Ronald Reagan]—involved?

13-00:39:08

Graff: Hodel. That was a Ron Good find. Yeah, and that was also ugly, because Ron's a great guy but he was not somebody to lead that project into the twenty-second century.

Lage: Because?

13-00:39:35

Graff: Well, he's an enthusiast, but not a leader.

Lage: And he was Restore Hetch Hetchy, basically, one of the leaders of it.

13-00:39:45

Graff: He was the first one. He's an unusual person. It's a nice group of people.

Lage: It sounds like a very romantic idea.

13-00:40:00

Graff: Right.

Lage: And it's amazing it's gotten as much traction as it has. Do you think?

13-00:40:06

Graff: Yeah. Did you see the first Ken Burns piece?

Lage: I missed it.

13-00:40:12

Graff: It had Hetch Hetchy in it. It was the second piece, I think; I don't know.

Lage: I have it recorded, but my TV is not in use right now. So is there more to say about the progress of the Hetch Hetchy idea, or the likelihood that it will come to pass?

13-00:40:38

Graff: This young guy, Mike Marshall, is trying to generate interest. My view is nothing will happen till Dianne Feinstein leaves.

Lage: She doesn't like the idea. Is it feasible to restore Hetch Hetchy and still provide the Tuolumne water—

13-00:41:02

Graff: Yes.

Lage: —to San Francisco? By using a dam downstream, or—

13-00:41:08

Graff: Well, I don't want to get into the details. Ask Spreck.

Lage: [laughs] Okay.

13-00:41:14

Graff: He has a whole theory about how you could do it. And let's see what other things I want to touch on, so I'm sure I'm done with it, and then we can come back if we have time. I don't know how much more I'm going to be on this earth. One thing I wanted to talk about is trips.

Lage: Okay, good.

13-00:41:44

Graff: I did a lot of trips. My first, and in a way, most fun trip was to Vienna, when I went to a conference there. And then by happenstance, I found out that the first Green convention, of the German Green party, was taking place in— I guess it was Frankfurt. So I went to visit there. And then my second trip was to Europe with CFEE, with Michael Peevey and Pat Mason and others. And then the third trip—I'm not sure I have these in exactly the right order—was to South America, to Brazil, Argentina, and Chile.

Lage: And did that have a purpose or a sponsor?

13-00:42:41

Graff: They all had sponsors of one kind or another. And then I went to New Zealand; I went to China with Dan Beard, as a U.S. government functionary; and then I went to India, which was a fabulous trip. Those were my six big international trips.

Lage: And were they water related, primarily? Or some of them?

13-00:43:05

Graff: Very. Water, energy, this and that. I actually went to Alaska once, too. That was with Chevron.

And then on water, that's the last topic before I come back to family. We talked a little just a few minutes ago about who owns water in California, really? Is it Resnick or is it Harris? Those are the two real competitors.

Lage: Now, say them again.

13-00:43:46

Graff: Stewart Resnick and John Harris.

Lage: Oh, and John Harris is?

13-00:43:50

Graff: John Harris is Harris Ranch.

Lage: Oh, Harris Ranch, of course.

13-00:43:54

Graff: And he gets all the subsidized water from the federal government.

Lage: For those big fields of cows. [laughs]

13-00:44:07

Graff: Steers, right.

Lage: So you're saying they are the two major water users, or owners?

13-00:44:11

Graff: Well, I'm overstating it. There's a public trust, there's a waste and unreasonable use, there's a community interest, there's a wilderness interest, there's water quality, and the rivers, there's politics, and they all intertwine.

Lage: And there's property, so-called property rights of water.

13-00:44:39

Graff: Property, right, right. So when which will prevail is very complicated. And looking forward, it's very hard to tell, except that at some level, I think water does run uphill to money.

Lage: [laughs] Which they've said for years, right?

13-00:45:06

Graff: Right. But even now, in Nevada, there's all this stuff about they're going to clean solar panels with the scarce water. So there's always a new twist.

Lage: And do you feel encouraged or discouraged about the state of things right now?

13-00:45:36

Graff: I feel encouraged, I think. I think in the long run, first of all, the US even with climate change, has a lot more water than a lot of places in the world. And when you're growing rice in the desert, it's a joke. So I feel like things can be done. A lot of things can be done.

Lage: Changes in agriculture and placement of farms and—

13-00:46:06

Graff: Right. And groundwater is still an available resource in a lot of places. A lot of innovative technologies are coming. Nanotech may be useful; who knows?

Lage: But the solutions we're looking at, that people are proposing now, are kind of the old solutions—

13-00:46:28

Graff: Right.

Lage: —of conveyance and storage.

13-00:46:31

Graff: And storage. But I don't believe those.

Lage: You don't think they'll pass, or you don't think they're good ideas?

13-00:46:39

Graff: I think they might pass in some form, and then get bollixed up. That's my view.

Lage: Did you see in the paper this morning, Dianne Feinstein apparently said we have to maybe set aside the Endangered Species Act and get more water to the farmers?

13-00:47:00

Graff: She's a joke.

Lage: [laughs] I thought you were a fan of hers.

13-00:47:04

Graff: Oh, no, no.

Lage: Oh, no? Oh, no, I misunderstood.

13-00:47:06

Graff: Oh, no. She's a joke. I don't want that to be quoted as my last words, [Lage laughs] but she just has a building complex.

Lage: A building complex?

13-00:47:21

Graff: Yeah. As does Schwarzenegger. And I don't get why that is.

Lage: Well, is some of it being tied into the Central Valley farmers, needing their support? Is that part of it?

13-00:47:41

Graff: Yes.

Lage: Just the politics of it?

13-00:47:43

Graff: Yes.

Lage: There are a lot more voters elsewhere.

13-00:47:47

Graff: No. And I fault Bill Bradley for some of that. He could've done more.

Lage: In the legislation or following?

13-00:48:02

Graff: Yeah, and following up. He was like we were on electricity and water; he did his thing and then he left.

Lage: And how about George Miller, the congressman?

13-00:48:18

Graff: George knows where it's at, but he's got a lot on his plate. I love him; he's a good guy. And part of my sort of approach to life is nothing is ever easy. It's always on the one hand, on the other hand. Or on the three hands, on the seven hands.

Lage: Yeah, yeah. And it's also never finished.

13-00:48:50

Graff: Right.

Lage: When we first started this, or in our early interview, you mentioned something about your father's approach to life or personality or something that you felt had been influential on you. And we never really pinpointed what that might have been. He strikes me as a person who wasn't terribly ideological.

13-00:49:18

Graff: Right.

Lage: Was that what you were getting at, or—

13-00:49:22

Graff: Yes. Yeah. I'm going to have to go, another day.

Lage: Okay.

13-00:49:29

Graff: Yeah, I can't go further.

Lage: Okay, I'm sorry.

13-00:49:31

Graff: No, that's okay.

Lage: We'll stop right here.

13-00:49:34

Graff: I think I've covered everything. [audiofile stops and re-starts] I was going to say—

Lage: Now I've put this back on. You said you wanted to say something about family.

13-00:49:42

Graff: Yeah. The greatest thing in my life, and I do want to end with it, is my wife and my three kids. And my sister and parents. They had a big influence on me.

Lage: Yeah. And you've had your priorities straight, it seems to me—

13-00:50:06

Graff: I hope so.

Lage: —throughout your career.

13-00:50:08

Graff: Well, I chose not to become the big shot, which I think was the right decision. Soccer triumphs over [laughs] prominence.

Lage: Well, soccer as a symbol of being involved with your family.

13-00:50:29

Graff: Right. So that's my deal. So my suggestion is this. I'm going to try to rest the next week and get out from under this horrific physical state I'm in. And I might not be alive in a week, but if I am and I recover some, we can go over the written stuff.

Lage: Right, that's what I—

13-00:51:00

Graff: And if not, I'm counting on you. [they laugh] [discussion about transferring his papers to the Bancroft Library omitted.]

End of interview.