Stuart Somach

THE PASSAGE OF THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT, 1991-1992: 
THE CENTRAL VALLEY PROJECT WATER ASSOCIATION PERSPECTIVE

An Interview Conducted by 
Malca Chall 
in 1998

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Representing Central Valley Project Water Assn. (CVPWA); drafting and revising John Seymour's bill S. 2016, and efforts to pass Seymour bill and oppose bills of Congressman George Miller, Senator Bill Bradley (Miller-Bradley bills); relationships with Miller, Bradley, Central Valley congressmen and their staffs; ineffective lobbying efforts of CVPWA; discusses Governor Pete Wilson, David Schuster, Daniel Beard, Victor Fazio, Richard Lehman, Calvin Dooley, Carl Boronkay (Metropolitan Water District), Kim Schnoor, Somach-Graff negotiations, CALFED.

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PREFACE

The Water Resources Center of the University of California, in 1965, established a History of California Water Resources Development Oral History Series, to be carried out by the oral history offices at the Los Angeles and Berkeley campuses. The basic purpose of the program was "to document historical developments in California's water resources by means of tape recorded interviews with men who have played a prominent role in this field." The concern of those who drafted the program was that while the published material on California water resources described engineering and economic aspects of specific water projects, little dealt with concepts, evolution of plans, and relationships between and among the various interested federal, state, and local agencies.

To bridge this information gap, the Water Resources Center, during the past quarter century under the successive direction of Professors Arthur F. Pillsbury, J. Herbert Snyder, and Henry Vaux, Jr., has provided funding in full or in part for interviews with men who have been observers and participants in significant aspects of water resources development. Early advisors to the project on the Berkeley campus were Professors J. W. Johnson and David K. Todd. Gerald Giefer, librarian of the Water Resources Center Archives, Berkeley, has maintained an important advisory role in the project.

Interviewees in the Berkeley series have been pioneers in western water irrigation, in the planning and development of the Central Valley and California State Water Projects, in the administration of the Department of Water Resources, and in the pioneering work of the field of sanitary engineering. Some have been active in the formation of the San Francisco Bay Conservation and Development Commission; others have developed seminal theories on soil erosion and soil science. But in all cases, these men have been deeply concerned with water resources in California.

Their oral histories provide unique background into the history of water resources development and are valuable assets to students interested in understanding the past and in developing theories for future use of this essential, controversial, and threatened commodity--water.

Henry J. Vaux, Jr., Director
Water Resources Center

January 1989
University of California, Riverside
The following Regional Oral History Office interviews of have been funded in whole or in part by The Water Resources Center, University of California.

Banks, Harvey (b. 1910)  

Gianelli, William R. (b. 1919)  

Gillespie, Chester G. (1884-1971)  

Harding, Sidney T. (1883-1969)  

Jenny, Hans (1899-1992)  

Langelier, Wilfred F. (1886-1981)  

Leedom, Sam R. (1896-1971)  

Leopold, Luna B. (b. 1915)  

Lowdermilk, Walter Clay (1888-1974)  
*Soil, Forest, and Water Conservation and Reclamation in China, Israel, Africa, and The United States.* 1969, 704 pp. (Two volumes)

McGaughey, Percy H. (1904-1975)  

Robie, Ronald B. (b. 1937)  

The Central Valley Project Improvement Act Oral History Series

Beard, Daniel P. (b. 1943)

Boronkay, Carl (b. 1929) and Timothy H. Quinn (b. 1951)

Golb, Richard K. (b. 1962)

Graff, Thomas J. (b. 1944) and David R. Yardas (b. 1956)

Nelson, Barry (b. 1959)

Peltier, Jason (b. 1955)

Somach, Stuart (b. 1948)

For other California water-related interviews see California Water Resources list.
INTERVIEW HISTORY

Stuart Somach, an attorney, and counsel for the Central Valley Project Water Association at the time the Central Valley Project Improvement Act was debated in Congress, was ideally placed to talk about the passage of the CVPIA from the perspective of the agriculture/water community.

Since passage of the Central Valley Project Improvement Act (Title 34 of the Omnibus Water Act), 1992, Mr. Somach has had time not only to reflect on that contentious two-year congressional battle but also to arrange his extensive collection of legislative drafts, revisions, memoranda, correspondence, et cetera. This combination of personal reflection and availability of primary sources, helped flesh out the story of the passage of the revolutionary water policy legislation as it affected Somach's career and the destinies of the agriculture, environmental, and urban communities.

Believing they had much to lose and nothing to gain under the provisions of the CVP reform bills of Congressman George Miller and Senator Bill Bradley, the Central Valley Project Water contractors strongly opposed the Miller-Bradley bills. For many years past they had successfully opposed George Miller's many Delta reform packages. Nonetheless, realizing that some reform of the Central Valley Project was imminent, they assigned Mr. Somach and others to draft an alternative to the Miller and Bradley bills and gave it to freshman Senator John Seymour to sponsor in the Senate (S. 2016). But this time their historic opposition strategies in the Congress were unsuccessful. Changes in congressional leadership (explained by Daniel Beard in his oral history in this series), and the strengthened environmental and urban water coalitions, spurred passage of the CVP reform act and defeated the Seymour bill.

Other interviewees in this Central Valley Project Improvement Act oral history series have questioned the conduct of the water contractors and proffered theories on why and how they lost their clout in the Congress: their refusal "to come to the table" and their reluctance to take advantage of opportunities to compromise. In this final interview in the CVPIA series Stuart Somach pulls together the various theories and offers his account for the failure of the water contractors to participate and their reasons for giving minimal assistance to Senator Seymour.

Somach's background may explain his role in the CVPIA drama. He had worked in the Departments of Interior and Justice in both Washington, D.C. and California between 1978 and 1984 on agricultural and environmental water-related issues, before going into private
practice in Sacramento. Since then he has represented diverse water interests, including the Central Valley Project Water Association. As a result, when the CVPIA legislation was unfolding, he already knew and claimed he liked most of the major players: George Miller, Dan Beard, Tom Graff, the Bureau of Reclamation staff, the water contractors and their staffs, and representatives of other private and public water-associated groups on all sides of the legislation.

Because of this background, he believes, as he states in his oral history, that "the notion that one is unable to understand the issues on the other side of the table [isn't] true at all, at least with respect to me and my involvement in this process." He cannot, therefore, see the issues in black and white, but only gray. Furthermore, he is convinced "that unless you live in the West you cannot understand western water." In Washington, D.C., "it didn't take very long before the issues associated with western water became academic and not real. I think that's important because it is real out here, and it's not academic. What you do with water and water resources is important."

In his oral history Mr. Somach explains why he had difficulty persuading his client, the Central Valley Project Water Association, to compromise its position on the Seymour bill. It is important to realize, he says, that the CVPWA is a collective, comprised of about eighty disparate agencies, large and small, with their own staffs, attorneys, and lobbyists. They do not speak with one voice. After finally approving their own reform bill, they believed they had compromised enough. Their position was rigid. "I spent hours, and hours, and hours with the contractors and with their attorneys going over every word, and changing, and modifying, as if there was no other side to this whole picture... It always amazed me because I was, of course, the guy that had to go sit down with the other side... It was this rigidity in approach that seemed to be our biggest problem." To the very end of the exhausting legislative process, the contractors and their lobbyists were certain they would not lose and therefore had little incentive to compromise. They were certain their western allies would rally to their side; if that failed they could filibuster; if that failed, President Bush could use his veto.

Although his clients weren't willing to make substantive changes to the Seymour bill, Somach defends it as "an honest attempt to address very serious problems in a systematic way." But, realizing that his clients were probably on the losing side, he worked with Miller's and Bradley's staffs to modify their bills, so they would be less onerous to his clients, and to fix some of the problems that he foresaw would result from certain provisions if they remained in the drafts.

As positions hardened, the idea surfaced that Stuart Somach and Thomas Graff could meet alone and draft a reform measure which might contain something of use to each side, since neither the water nor
environmental groups were satisfied with what was out there at the time. For Somach, it presented "the opportunity to cut a separate deal with the enviros... I thought that it was a lot better because I could control that drafting much better than I was ever going to be able to control anything that was happening in Washington because they were now an independent machine moving forward. ...What they were moving forward with was not anything that was good. ...If the drafts they were working on had been enacted, it, in fact, would have been infinitely worse than what, in fact, was enacted, which adopted some of the principles out of Somach-Graff."

Stuart Somach narrates the well-known dramatic conclusion to the Somach-Graff negotiations: at the last minute, on June 16, he was not permitted by Governor Wilson to show his draft to Senator Seymour or explain it to other congressmen, senators or their staffs eagerly waiting to hear from him. Referring to his extensive collection of CVPIA material, Somach examines the many elements of the Somach-Graff draft which made their way into the final CVPIA bill.

The contractors did not defeat the CVPIA. As Somach understood from the beginning of the process, there was no savior out there. Western congressmen had had their own water bills tied up for years in George Miller's Omnibus Water Bill. Miller and Bradley had given ample warning: they would place the CVPIA within the omnibus bill. Western allies would not rescue their California colleagues for fear of losing their water projects in Arizona, Utah, Colorado, Wyoming, and other western sites. The filibuster failed, and President Bush, despite entreaties from the agricultural/water interests, refused to veto this extensive water act so important to his other western constituents.

The opportunity to add Mr. Somach, a key witness to and participant in the CVPIA story, came with funding from the Centers for Water and Wildland Resources, the source for this interview series. When he agreed to record his account, I sent him a brief outline and a chronology of significant dates, events, and personnel within the framework of the 1991-1992 debates.

On May 1, 1998, we worked in the conference room of the De Cuir & Somach offices on Capitol Mall, in Sacramento, beginning at 10:00 a.m., taking a short, non-lunch break, and continuing until 2:30 when Mr. Somach left for another appointment. A cart full of primary sources was at hand when we were ready to discuss the Somach-Graff draft and the final CVPIA bill. Mr. Somach seemed pleased to be able to offer his own "on the ground" experiences to those of the former eight interviewees. He spoke clearly; interesting anecdotes often accompanied the details. Unfortunately, he had time to tell only a few.

He reviewed his lightly edited transcript, revising a few sentences to clarify meaning. Mr. Somach's oral history offers further
insight into the Central Valley Project Improvement Act, the historic turning point in California water policy.

Once again we thank the Centers for Water and Wildland Resources for granting the funds for this and other water-related oral histories produced by the Regional Oral History Office.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, Division Head, and the administrative direction of Charles B. Faulhaber, James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Malca Chall
Interviewer/Editor

July 1999
Regional Oral History Office
The Bancroft Library
University of California, Berkeley
I BACKGROUND: EDUCATION AND CAREER

[Interview 1: May 1, 1998] ##

Education: Early Start in Water Law

Chall: As you can tell from the outline, I first like to get a bit about your background, your education, and how you happen to be in this particular spot. Tell me about yourself.

Somach: I went to undergraduate school at San Jose State University. I got my degree there, and then I went into teaching. I taught high school and junior high school for five years.

Chall: What subjects?

Somach: History, English, and government, those types of things. Then, I went back to law school.

Chall: You went back to law school, or you went to law school?

Somach: I went to law school. I went back to school, but it was law school.

Chall: All right; ambiguities. [laughter]

Somach: I went to law school for the first time, I should say. I went here [Sacramento] at the University of Pacific, the McGeorge School of Law. I took a lot of course work there in the area of natural resources law. Environmental law was not a big deal at that point. In fact, I think I had a burgeoning class, one survey class, called environmental law, but it was not much of an area at that point in time.

##This symbol (##) indicates that a tape or a segment of a tape has begun or ended. A guide to the tapes follows the transcript.
Chall: What point in time was this?

Somach: This is in the mid seventies.

Chall: Just then, the edge of it.

Somach: Right at the beginning, that's one of the things I've always talked about in my practice. I came out of law school about the time that everything was starting so, as a consequence, I was involved in a lot simply because of the legal positions I held. That was good because what I did was I learned the whole area of environmental law from its start and have been able to keep up with it pretty well as the laws changed over the years. It's given me this great foundation.

I took a lot of natural resource classes, as I was saying, in law school, oil and gas mining, public lands law, everything there was. McGeorge had a pretty good offering, including water law. In particular, in water law, I was fortunate because the guy that had written all the books on western water, Frank Trelease--.

Chall: What was his name?

Somach: Frank Trelease, T-r-e-l-e-a-s-e, who had been the dean at the University of Wyoming's law school, was a visiting professor. I took a water law course with him, and he and I hit it off pretty well. He was in the process of editing his water law case book and asked me to help him out doing that.

So, my job was actually to take everything that was in the case book and update it to, I think at that point, it was 1977, '78, something like that. So, it required me to read everything that was in the case book. Then, I read every Law Review article. I looked at every statute in the western United States, and I looked at every case that had been enacted from the date of his last edition forward. What I would do was provide him with synopses of what was in that. He decided what he wanted to include and not include in the case book. Then, I had some assignments in terms of writing.

One of the things it did was give me this incredible foundation in the area of water that a normal person would not get because a normal person would not go through what I went through. I can assure you that it was a hard thing to do. At the same time, I got hired as a law clerk at the solicitor's office of the Department of Interior; we have a regional solicitor's office here. Basically, what I was assigned was water-related stuff. Although, I worked in other areas, it was mainly water. Part of that was because they knew that I had this foundation in water.
So, I worked there. Then I was hired, before I got done with law school, into a honor's program that the Department of the Interior had in the solicitor's office back in Washington, D.C. What they were doing was hiring the top graduating seniors out of law schools that had natural resource courses to go back to Interior to work for a year, or a year and half, or something like that, where you rotated through every area within Interior, and then you made a decision on what you wanted to do.

Luckily, I got hired early, in December of my last year in law school [1978], so I knew I had a job. Basically, what I did my last year of law school was go to school, and then I worked twenty hours a week for Frank Trelease, and then I worked twenty hours a week at the solicitor's office gaining all this background. Then, I went back to Washington, D.C., and started applying it in the area of water. By the time I got there, I already had a little bit of a reputation within the department because of the work I had been doing. It didn't matter where I was working, whether I was working on Freedom of Information Act stuff, or Indian stuff, or National Park stuff, people would keep giving me assignments dealing with water. So, it was following me throughout the program.

Beginning Career: Water Law in Departments of Interior and Justice

Somach: Then, another thing happened, it was just coincidence. It was that a lot of people in the government that had been working with water, both in the Department of Justice and Interior, retired. So, there was a vacuum. It was just one of those very strange things. I kind of filled the vacuum. I had a capacity—. I worked a lot of hours, I did then too, and so, it was one of those things where because I had this foundation, and because they had a big need, and because I was willing to work hard to fill it, I, in fact, filled it.

I worked lots and lots on various assignments, and it culminated in that first year of legal work in writing all the internal memoranda on the Mono Lake cases. This was before the Mono Lake litigation got started. There was a lot of petitioning and posturing attempting to get the Department of Interior, the United States, to come into litigation on one side or the other of that controversy. I was assigned all of that work to do.

In addition to that, I worked a lot on Bureau of Reclamation water issues in California, including all of the Bay/Delta related cases. What happened during that period of time was that I got
detailed to the Department of Justice to assist them in the litigation of whatever, then, was being litigated in the series of Delta cases. I can't remember now whether it was decision 1379, or D1485, or whatever.

Chall: Somebody else can figure that out.

Somach: I got detailed, ironically, back out here. I had planned on staying in Washington. I liked it out there; I liked the work I was doing, but they detailed me out here. So, I was actually working for the Department of Interior but working for the Department of Justice. In fact, the Department of Justice was picking up the tab for me to be out here.

Chall: What was the interest of the Department of Justice? In the Bay/Delta?

Somach: It was litigation. Because it was in litigation and once matters with the federal government get into litigation, the Department of Justice takes over. So, I found myself in this peculiar position. Ultimately, they transferred me to the regional solicitor's office here in Sacramento. I was made a special assistant United States attorney. At the same time, I was an attorney with the solicitor's office in the Department of Interior. So, I was now doing all this litigation work, plus I was doing all of the transactional and representational work for Interior on all the water issues in California.

Chall: That's pretty heavy.

Somach: Yes, well, keep in mind that this is not very far out of law school that I'm doing all this. Then, ultimately, I got smart and said why am I doing two jobs when I could just do one? I was hired as an assistant United States attorney and left Interior and then just focused on the litigation of all these cases. Later, because the cases were so political, main Justice decided it wanted to open up a field office out here so they could have more control over what was happening in these very political water cases.

They made me the head of that field office. I was in charge of the field office, and I reported to the assistant attorney general directly and did that for a long period of time. For about five years, basically, my job was representing the federal government either Interior, or particularly with the Department of Justice, all the federal agencies with respect to all the water issues in California. So, that's kind of the background. I left the government in '84 and went into private practice.
Private Practice: Continuing Involvement in Water Issues

Chall: When you went into private practice, you began in other law firms besides your current firm De Cuir [Dennis] & Somach?

Somach: Yes, I started with a firm, McDonough, Holland, and Allen. It is a firm here in Sacramento. I worked with Martin McDonough who was a water lawyer. At his death, he had practiced water law for fifty plus years. He was just an amazing guy. It was kind of neat because I had spent a lot of time, obviously, practicing water law on my own and had a pretty good reputation at the point in time I left the government, but it was kind of neat to be able to learn from someone with that kind of wisdom and experience.

I learned a lot of things from him, which actually have, in my later years of practice, been even more important to me than when I was younger and directly working with him. I worked at McDonough until 1991. I think the beginning of what all I did on the CVPIA was actually there--at least, what became the CVPIA was there. During that period of time I represented a lot of water interests, including the Central Valley Project Water Association [CVPWA], where we were involved in a lot of activities. I worked very closely with a lawyer down in the San Joaquin Valley. His name is Ken Kuney, K-u-n-e-y. He was the person that asked me to assist, originally, on all the Central Valley Project Water Association work, and who throughout the entire period of the time that I did a lot of their work was the person that I considered the anchor of our legal position. I considered myself, particularly in the later times, as being the guy that was doing all the leg work, but he was always the guy that I would go back to and talk to about all of the details and substance.

Chall: Where did you say he's associated?

Somach: He had his own law firm. I think it was Berryhill and Kuney for a long period of time. He's now retired or semi-retired, and he's of counsel to a firm. I can't remember; I haven't talked to him in years.

Chall: That's okay. Are you of counsel to the CVP water contractors?

Somach: No, not now, but I was acting as their attorney directly for a long period of time. In other words, they retained my law firm to do work for them, that was how it came about.
Chall: By the way, do you have your chronology with you?

Somach: I have it. I could go get it.

Chall: I think we will need to be looking at it together.

Somach: I hope I can get it in my office.

Chall: I think we've covered your education and early career background pretty well, unless you want to tell me a little bit more about your family background, or your education, or anything beyond that.

Somach: The only thing that I would add is that one of the funny things I find—and it really does find its way into the general discussion as we get into the history of the CVPIA—is that I'm convinced that unless you live in the West, you can't understand western water. I actually grew up in Chicago and moved here when I was in high school. So, I had the experience of living in a fairly pluvial area where it rained a lot, where it was very humid during the summers, where you got the general east of the hundredth meridian view of water.

I remember coming out here. Then, I lived out here, obviously, for a number of years before I went back and lived in Washington, D.C. One of the things I discovered when I was working and practicing in Washington, D.C., was that it didn't take very long before the issues associated with western water became academic and not real. I think that's important because it is real out here, and it's not academic. What you do with water and water resources is important.

The second thing is that when I entered the practice of law, I would have argued that I was an environmentalist. I leaned very heavily in that direction. I still believe myself to be that way. I've often said the worst thing about practicing in the area of environmental law and representing folks that are in agriculture and other areas is that the luxury I had of seeing everything as black and white got kind of destroyed, and I only can see things in grey right now. That is something I wish I didn't do. It was much easier when I saw things much clearer in black and white as I did at that point in time.

\footnote{A time-line chronology of congressional activities, lobbying, and people relevant to passage of the CVPIA prepared by Chall for use in the interview series.}
That's another issue, I think, that also creeps into the CVPIA; this notion that one is unable to understand the issues on the other side of the table. I don't think that's true at all, at least with respect to me and my involvement in this process. But anyway, in terms of additional background, I think those two points are important.

Chall: Okay, at the very end of our interview today, I want to talk with you about what's happening with CALFED. I think this need to look at things from the grey side--the black on one side, the white on the other--is becoming rather important.

Somach: I can also give you the short of version of my speech on consensus building, but that's another story.

Chall: It is becoming quite difficult, but I should think it's essential. In terms of the background here and the CVPIA, in the days prior to the CVPIA, in '88, '89, '90, did you have any interactions with any of these people or institutions that I've listed on the outline that you want to talk about? People who were important during that legislative struggle?

Somach: The answer to that question is yes. Because of my federal service, I actually was familiar with a lot of the people at the Department of Interior, and also people that had moved out of the Department of Interior to various places that became important. Dan Beard, in particular, I knew back when he was at the Department of Interior as an assistant to Guy Martin, who was an assistant secretary. I have known Dan since that time, since the late seventies. I considered him, then, and considered him all the way through the CVPIA, and still consider him a good friend. The answer to that question is yes, particularly with Dan.

The Coordinated Operations Agreement: A Significant Legislative Experience

Somach: With respect to some of the other players, I had been very active in a prior piece of legislation, right after I left the government in '84, '85, having to do with the Coordinated Operations Agreement [COA].

Chall: Oh, did you?

Somach: Yes. In fact, again, on behalf of the Central Valley Project Water Association, I and Dave Schuster did all of the leg work on behalf of the state contractors and the federal contractors in
order to get that legislation passed. I was back in Washington almost as intensively if not as intensively as I was with the CVPIA, where I was going back on a weekly or monthly basis to Washington, D.C. We worked closely with a person who was on Tony Coelho's staff at the time, and that's Kim Schnoor. I think her name may have crept into some of the other histories that have been done. Kim worked for Tony at that time.

Basically, we did all of the work. We wrote the legislation. We wrote legislative history. We negotiated with Dan Beard about the legislation. We worked very hard with George Miller and others at that point in time to attempt to get that legislation enacted. In fact, the core of the COA legislation is exactly as we had drafted it.

The history of that was that we had first worked independently with the federal contractors and the state contractors to get them on board. We, then, moved outward, and we worked with a coalition of environmentalists as well as urban and other agricultural water users. We did that all out here in California. We spent hours, and hours, and days, and days meeting with people like Sunne McPeak, and Tom Graff, and Jean Auer, and went on, and on, and on.

Finally, we got a consensus from all of those folks on the legislation and what we should do. So, basically, when we went back to Washington, D.C., we had all of that as a foundation. We would report back not just to our clients but also to that broader group of people. We negotiated initially with Dan Beard because we felt that it was the House side that was the most significant, which resulted in kind of an interesting story, which is relevant again to the CVPIA.

One of the things that we did was sit down with Dan, and we've got all kinds of funny stories about those negotiations that I could tell you about. They're about as interesting, or more interesting, than the CVPIA.

**Chall:** Do you want to tell me?

**Somach:** We spent hours and hours working on that legislation. At one point I got upset with Dan and jumped up and told him he was being unreasonable and slammed my briefcase down. We've laughed about that often since then. It was the first time, coming from the government that I was actually representing a group of people. Representing the CVPWA, the CVP Water Association. It's kind of a different climate because they're not of one mind but are made up of different people with a bunch of disparate people, so it's difficult to figure out exactly how to represent the collective.
It was always difficult, yet what you got was people [in D.C.] looking at you and asking you what your position was. So, the identity between you and the CVPWA got blurred. It got blurred then, and it got blurred even more during the CVPIA process, so that you became identified as the client as opposed to people [in D.C.] recalling that you were a lawyer representing people. That created a lot of problems, not so much during the Coordinated Operations Agreement because it was a much more discrete piece of legislation, but it really became a problem during the CVPIA stuff. I'll tell you some interesting stories about that.

Chall: We'll talk about that.

Somach: In doing the Coordinated Operations Agreement legislation, one of the things I found interesting--. Dave Schuster would recall these stories very well. Dave and I worked very closely on that. He was representing the state contractors. We were being called on the spot to make decisions as people were going into meetings, where legislators were going into meetings together to do a deal. The question was what is the contractors position? If we go in here and do this deal, is that going to do it?

With no ability or time to be able to call back and get direction on these things, it was a very strange thing. One time, in particular, I remember walking with Kim and Dave down a hallway where they were going into a meeting to cut a deal on some of the final language--that is Tony Coelho and George Miller--being asked that type of question on a very significant issue and having to decide which way to go and then quickly after I had made that decision go back and hopefully get ratification from my client on the position. So, it was an interesting exercise in that regard.

One of the problems we had was that the Bureau of Reclamation was not anxious to have that legislation move forward.

Chall: Why is that?

Somach: Not too dissimilar with what happened with the CVPIA, where Interior was not in the picture at all. It was because of the regional director's view. He was the kind of guy who liked to manipulate things. If it wouldn't manipulate in his direction, he didn't want to do it. This is Dave Houston. He was a really smart guy, but a guy that had an agenda certainly and if you weren't moving in his direction, you weren't moving in the right direction according to him.

Chall: Well, that's rather important because the COA was a very important piece of legislation at that time.
Somach: It still is.

Chall: It still looks like it's a part of the CALFED and the CVPIA.¹

Somach: It is important too because it dealt basically with allocation responsibilities to pick up water quality in the Bay/Delta process. It was just a very interesting process, but, because of this, I then became the federal guy. It became more than just the contractors. Since no one was talking to the folks at the Bureau of Reclamation, I became the point guy. At one point, I got summoned to Bob Broadbent's office. He was the commissioner of reclamation. He was a very unhappy guy.

In the process, I had one of his aides, who I don't remember, take me out in the hall and give me a lecture where he was poking his finger at me about what I couldn't be doing. Then, when I got into the meeting with Broadbent, I remember that he was very upset, very upset. There was a representative of the contractors who was at the meeting. He was on the CVPWA board of directors and had been sent out as an unofficial CVPWA representative in D.C. He was sitting on the couch. He was a very good friend of Bob Broadbent.

The first thing Broadbent did was he yelled at Schuster, but obviously Schuster, representing the state water contractors, didn't have anything to do with the federal government. Then, he turned around to me. I remember, he was seeking the worst condemnation he could hurl at me. He ended up calling me a "damn lawyer." [Chall laughs] That was about it. I remember thinking at the time that I had clients to represent, and that this attempt at intimidating me was just going to go nowhere. Then, I remember Broadbent turned to the person on the couch, I think it was Jim Sorenson, and he said to Jim, who again was a friend of Broadbent, "What do you have to say for yourself? Is what Stuart says the contractors' position?" I remember holding my breath at the time, not knowing what Jim was going to say. Jim said, "Absolutely." So, it was the kind of backing that I needed. That was an example of what we went through.

¹CALFED. Acronym for California-Federal (The California Water Policy Council and Federal Ecosystem Directorate), a group of state and federal water and environmental agencies whose aim is to reach final decisions on improving the San Francisco-San Joaquin Bay/Delta system, within parameters established by the interim 1994 Bay-Delta Accord, the CVPIA, the EPA, and other regulations and concerns of the stakeholders. Its alternative solutions were being debated during 1998.
We negotiated that all the way through the House, and we got exactly what we wanted out of it. At that time, the House and the Senate were controlled by the two different parties. At that point, it was, I think, [Ronald] Reagan's first term. As a consequence, I know that the Senate was controlled by the Republicans. We went over there, then, to explain what we were doing in the House.

I'll never forget meeting with the staffers on the Senate side, and in particular, Gary Ellsworth who I think is now the chief counsel on the Senate side that deals with natural resource issues. It was the first time I met with those folks. We were in a room, and Dave and I gave our spiel in terms of what was going on and what we needed. They said thank you very much and ushered us out of the room, and we never had another say on the Senate side as to what happened. They just did a number on us.

The COA part of the legislation stayed exactly the way it was, but they tacked onto it things affecting small reclamation projects. They've tacked onto it O and M [operations and maintenance] deficit language that required us to pick up O and M deficits, and a whole bunch of other financial stuff, which almost scuttled the bill. We had the power to kill the bill, but we didn't have enough power to change it and get rid of pieces of language.

The question became will the benefits of the COA outweigh the detriment of these extra things that have been added onto the bill on the Senate side? That, luckily, was a decision that we had some time to consider, so the clients actually got to make the decision. I didn't have to make a call on that. They decided ultimately that the benefits of the COA were worth the burdens associated with what the Senate had tacked onto it.

The residual of that was that I learned a lesson about not just focusing on one house of Congress when you are dealing with this type of water legislation. Moreover, people like Gary Ellsworth and Jim Beirne became really good friends of mine over the years between then and the time of the CVPIA legislation. They became very good friends. We worked very closely together on the CVPIA with them.

Chall: They represented the Republicans then?

Somach: They still are, and they did at that time. The Senate works a lot differently than the House does. It's just a different body. They work differently. They allowed people like [Senator Howard] Metzenbaum to add the type of financial riders on the legislation I noted above.
Somach: With the COA, we obviously worked with George Miller, and with Dan, and with Moe Udall. We were in Senator [Alan] Cranston's office, then Senator [Pete] Wilson's office during that period of time. The bottom line of all that is that we got very familiar with the personalities and players. We met with the governor, Governor [George] Deukmejian. Before that, I had involvement with Jerry Meral and Ron Robie who were at DWR [Department of Water Resources], then with Dave Kennedy certainly on all these issues dealing with the COA.

One of the things that whole experience did was, number one, make me familiar, as a representative of the CVP Water Association, with all the various players that were important then, and who were important during the period of time from the COA legislation to the CVPIA legislation, who remained important during the CVPIA legislation. So, when I started working on this, I didn't start from scratch. I started with relationships already developed, with, I hoped, credibility already developed with these people. They had called upon me a number of times during the period of time prior to the CVPIA, all of the people there, to assist them on various matters.

When I do this Washington, D.C. stuff, I don't like to consider myself necessarily lobbying for anything. What I'm doing is providing a lot of legal and factual background to assist folks. The CVPWA had lobbyists. They continue to have lobbyists; my role isn't that. My role is to do this other stuff and I still do. I get lots of calls from lots of people just for information. I've written countless legal memoranda for people on various issues just as background for work that I'm either working on, or even what I'm not working on but which touches on areas that I know about. As a consequence, when we got into the CVPIA, we had that foundation pretty well established.

Chall: I see. In the early years, '89 to '90, you were working a lot with Dave Schuster in drafting bills that turned up, I guess, eventually as--. Well, let's see, in 1990, many of them turned up opposing the Miller bills. Is that right?

**That Gut Feeling: Stay out of the Politics of the CVPIA**

Somach: Yes. I will tell you my experience on the COA told me that I should not get involved in the CVPIA. The dynamic had changed
greatly. Congress was totally in control of the Democrats. George Miller and Bill Bradley had a great deal of influence in their respective positions. Moe Udall was gone, and things were dramatically different in terms of the dynamic that was in play.

I did not like, and I do not like, doing this Washington, D.C. work because it's not something that I like doing, period. During the early stages, the Miller bill, the Bosco bill, all of those early things—. I'm looking up on the outline a little higher up, and looking at those other issues. In '82 I was still in the federal government. I had done a little bit of work, ironically on the side of the federal government, on the Reclamation Reform Act. I had done a lot of water quality work, a lot of Endangered Species Act work.

In fact, I had represented a small environmental group, the Friends of the Sea Otter, in terms of getting a species' specific amendment to the Endangered Species Act and was back in Washington on that. I was kind of on the other side, I guess you would argue, of the issue with them in a period of time. I believe that was just subsequent to the work we did on the COA. So, I had spent a great deal of time going from coast to coast working on all this kind of stuff.

I had worked closely with a lot of the environmental groups. I have a very close relationship with Tom Graff, not just professionally, but socially also. As I said, I don't come at this inherently believing that environmentalists are evil or that their views are wrong. As a consequence, I have always attempted to look for the middle ground to figure how best to deal with these issues. All of that is background. When we got into this initial drafting of the Miller bill and some of that early legislation, there was no way I wanted to get involved with it. I figured it was going to be a loser; I thought we were in big trouble.

Chall: You did?

Somach: Yes, absolutely. I figured, for me from a professional perspective, it was just not a winning situation to get myself caught up in.

Chall: But, you did, so how did that happen?

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1In 1989 and 1990 George Miller and Douglas Bosco each introduced bills into the House dealing with fish and wildlife restoration programs.
II THE PASSAGE OF THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT

Somach: Well, what happened was Jason Peltier, who was the general manager of the CVP Water Association, did all of that early work. It came out bad. It came out all bad for us. At that point in time, we had the ability still to kill legislation. Senator Wilson was there, and there were a number of issues, crucial issues, associated with the authorization of the project for fish and wildlife purposes and other types of things that were in those earlier pieces of legislation where I said, "You just can't agree to this type of thing."

It was at the very end of that process that I kind of weighed in. I was in the situation I wanted to be in at that point in time to be able to say no, without offering necessarily any solutions to the problem other than, at that point in time, we still had the ability to stop something even though we didn't have the ability to run what we wanted to do. So, we did, that's what we did.

Chall: Is that S. 2657, the first Omnibus Water Bill?

Somach: Yes, I think that was the one that Wilson stepped in and stopped. That was how that first effort kind of culminated. I tell you, one of the things I've never done and don't want to do is to go back and compare all of that legislation with what became the CVPIA. It may be the CVPIA is much worse, from our perspective, on a lot of those issues. I know it's more specific on a lot of areas.

Ambiguous Early George Miller Legislation Looks Bad for the Water Contractors Gradually Sensing a Loss of Power

Somach: One of the problems with those earlier pieces of legislation was, because they weren't specific, they were very general, and that
was not a good thing. There was a lot ambiguity. That was one of my objections to that legislation. That there was a lot of room for mischief.

Chall: Are you talking about your bill?

Somach: No, I was talking about basically what Miller had drafted primarily at that time, which was what we were covering.

Chall: That's H.R. 4700, or whatever?

Somach: Yes, it was that early legislation. I don't think the files that I brought to refresh my memory even go back that far. That's yet another set of files I have. If I'm sketchy on the exact--. But, there was all this legislative effort that ended up in nothing, and then everything started all over again. It was that legislative effort that ended up in nothing that--when you looked at it its failures--they were in some of its re-authorization language, and then in its ambiguity. It was spoken in a broad general language. It was a much shorter legislation than the CVPIA ultimately became. So, it attempted to get at the same types of issues, but with a very broad brush.

The problem was that you could not really tell what the potential problems were. All you knew was there were a lot of potential problems. This was an era, remember, when we were transitioning from a Bureau of Reclamation that was more or less an agency that was serving the water contractors to an agency that tended to have some views that were adverse to the water contractors' interests. This was the era of the birth of the "new" Bureau of Reclamation.

Chall: Meaning?

Somach: You know, a reclamation that was moving away from water projects toward environmental and other kinds of management of existing projects. We saw the beginning of that even with the Republican administration and what Dave Houston and others were doing, and that led to our going independently on the COA legislation.

As time progressed, it got more and more apparent that the contractors had to start looking out for themselves. Just providing authority and discretion in legislation, to the Department of Interior or the commissioner of reclamation, was not a good thing because we didn't know how that authority was going to be exercised. There was much more of a potential for it being implemented in a manner that was adverse to the contractors interest than anything we would have ever conceived of just a very few years before.
Chall: Is this because, at that time, the environmental movement was getting stronger? You had the Clean Water Act and the ESA.

Somach: Oh, sure. All of that stuff was happening, yes, absolutely.

Chall: CEQA [California Environmental Quality Act], you name it?

Somach: All of those types of things provided an ability by environmentalists to independently influence what the Department of Interior was doing. On the Trinity River, we were having potential problems with flows there, and the influence of the Hoopa Tribe, the Indian tribal issues that we had not previously had a lot problems with. That was becoming an issue, and it became implicated within the CVPIA.

So, the notion of kind of having this amorphous piece of legislation with the knowledge that Bill Bradley was where he was, George Miller was where he was, that they could build upon that in Congress, the uncertainty about what was going to happen in the executive branch--. The fact that even under a Republican administration, we were having conflicts with the Department of Interior over administration and interpretation of reclamation law led one to believe that it was not a good idea to have a piece of legislation that re-authorized the CVP for fish and wildlife purposes and then added these very broad amorphous goals where we had no control over how those things were going to be implemented.

So, at that point in time, what we did was what we had historically done. We exercised whatever power we had to veto a bill and that's what happened; legislation kind of stopped because we said we couldn't accept it.

Chall: So, then that was probably either in October or November of 1990.

Somach: Right.

Stuart Somach Becomes Involved: The Influence of David Schuster


Somach: Right, and what you had was the next Congress moving forward with these bills again. At that point in time, I still didn't want to get involved in this stuff. It was Schuster who dragged me into this thing, kicking and screaming.¹ I can tell you, I didn't go in willingly.

¹David Schuster. An edited, but unreviewed, biographical oral history interview conducted August 1991 to February 1992, sponsored by the California State Archives, is under seal in the Archives.
Chall: And, your relationship with Schuster has been, well, fairly long, and fairly deep.

Somach: Actually, when I started as a law clerk with Interior, Dave was operating the Central Valley Project here in Sacramento. I was a law clerk here in Sacramento. When I went back to the Department of Interior in Washington, it just so corresponded with the period in time when he was transferred back to Washington. Then, when he was sent back out here and was the assistant regional director, and in effect really running the Central Valley Project, I was sent back out at the same time. So, we were working and doing basically the same stuff. So, I knew him. We weren't close friends at that point in time, but we worked closely together.

When I went into private practice, it was about the same time he left the federal government. At that point in time, we became really good friends, really close friends both professionally as well as socially. That friendship got strained in the CVPIA stuff. When we worked on the COA, then, we worked very closely together. I'm certain that I saw more of Dave during those periods of time than I saw my wife. I know I did, actually.

Then, on top of that, when we were not working together, we were going out socially. So, between Dave's wife and my wife, we were together all the time. We'd take trips together, our two families. It was a really close relationship. He basically told me that we had to do this, that it was one of these things which he said that, "You've got to do for the greater good." I kept saying, "I'm not doing it."

Dave doesn't understand some things because he is not a lawyer. I still don't think he understands the fact that a lawyer has certain ethical constraints and limitations on what a lawyer does. I've never done anything, as a lawyer, that's been for my own personal pleasure or anything like that. I only do what my clients want me to do. I have attempted, even in some very difficult situations with respect to these legislative efforts, to adhere to that absolutely.

Since Dave doesn't have that same kind of relationship with his base of support, it has resulted in some tension between us and some missing at various times in terms of what he wanted me to do and what I could actually do. Early on, that was part of the problem. First of all, I had no mandate from my clients to do anything--.

Chall: Yes, I was just going to ask you--. You really had to have a mandate; you had to be hired by somebody to do this.
Somach: That's right. That's the other thing. I'm in a private practice, and I have to earn a living.

Chall: So, just to sit down and write a bill, for whom? Like writing it the way Dave Schuster might have wanted to write it?

Somach: That's exactly right. So, I didn't want to get involved, that was the whole thing. He was pushing me awfully hard. Dave would talk to people on the federal side, quite honestly, and say, "Somach has got to do that." So, invariably, what would happen is I was contacted, and, like in most of these types of things, you don't ever just jump in with both feet all at once. You just find yourself wading, and the next thing you know is you're too deep to get out, and that's what happened in my initial involvement in the process.

The other thing that happened was that Dave and I would draft, and Dave would look at it as a fait accompli, and I would have to go back to my clients. That's one of the other problems that occurred during this whole process with my clients, particularly early and, I think, actually, throughout the whole CVPIA process. They never did get the message that things weren't as they once were when they had the ability to control what Congress was ultimately going to do--that they could always kill a bill at the end if they didn't like it.

Remember, that had been exactly what had happened. They had a lot of influence, a lot of power, on these water projects, and they had never been presented with a situation where they really didn't have the ultimate control, if not to get exactly what they wanted, to avoid the alternative. An example of that was the Reclamation Reform Act where they had Tony Coelho sit there with George Miller and really have an ability to affect what happened on the RRA. When it was finally enacted, it was something that was not as onerous as it would have been.

But, they didn't have that type of situation going for themselves with the CVPIA. Yet, when I would come back, even when Dave and I were drafting, our work was always subject to my client's discussion. We would have rooms full of people, thirty, forty, fifty people. That's part of the problem I talked to you about earlier, or mentioned earlier, about a lawyer's problem in representing a disparate group like this is; you'd have fifty people, and they'd all be sitting around a table expressing views.

Chall: They all disagreed with each other as well as with you?

Somach: As much as they agreed, they had different views. I mean they had litigated against each other historically and continue to this day
to litigate against each other. Moreover, that room was full of lawyers representing all these people who either were unhappy or less than satisfied with the fact that I was representing the CVPIA, and doing the work, and earning the money presumably that they otherwise would have liked to have been involved with.

I didn't represent any individual district separately, so I had, personally, no conflict there. I only represented the collective.

Chall: The collective being the CVPWA, right?

Somach: That's right. That was another reason why I was tossed into this situation because given the fact that they weren't necessarily agreeing with one another they didn't want any of their respective lawyers representing the collective, and so going to me was, in a sense, the only way to go. I had past experience, certainly, but I think, as much as anything, the fact that I didn't represent any of these entities separately and had never represented any one of these entities separately was something that at least allowed them to get around a table.

Plus, again, I want to re-state the fact that I was working closely with them through Ken Kuney during the early stages of this thing. At the end, our relationship strained because of the fact that it became impossible for me to continue to get clearance on everything that was happening in the process. Ken was a very well-respected guy, and continues to be well respected by most of the CVP contractors.

Chall: How did Dave Schuster get in on this? He was, then, working maybe for just one or two of the state water contractors?

Somach: I think he was working mainly for Kern, as I recall, Kern County Water Agency. That's kind of the charm of Dave's personality is that he just keeps going. One could question why the state contractors were interested in any of this stuff at all, yet he convinced them that they had a stake in what was happening.

Chall: Which they did really.

Somach: That's the reality of the situation. I mean, it's his vision, his knowledge of the facts. In spite of themselves, he would continue to work on this stuff on their behalf and go back and kind of get validation for what he was doing. As long he was getting that validation, at least from an element of the group--. At some times, Dave Schuster becomes a force unto itself, so to speak. You have to kind of wonder. My experience, though, has been, in retrospect, he's usually darn right about everything. He's had
his ups and downs. Ultimately, in my experience with him, my observation, people always come back to him at some point. If there ever is an indispensable person, he may be close to that.

Chall: In his knowledge of--.

Somach: Just his general knowledge, and his savvy in terms of the way it all works. His background is unique that way. I think that's part of what happened. Remember, this didn't just play itself out over a short period of time; we're talking about something that played itself out over several years. So, as a consequence, there were cycles where he would become on the outs, and then become indispensable again to the process. He has a great deal of credibility, and he had a great deal of credibility in Washington, D.C. as the guy that knows this stuff. So, as a consequence, that indispensability, I think--. Certainly, I understand no one is indispensable, but as I said, you get as close to it--. You certainly wouldn't want to dispense with it if it was available to you.

Chall: I presume that the same was true of you in terms of the law and water, so that maybe the two of you were indispensable at this juncture.

Somach: Well, that's certainly self-flattery, but there may be some truth in it.

Senator John Seymour: Deep Concern for the Issues; Constrained by Rigidity of the Water Interests

Chall: Well, in that case the two of you did write several bills, or more than several before you got one to Seymour. Let me ask you a question about John Seymour. When he was appointed by the governor [January 1991], and then appointed to the Senate Subcommittee on Water and Power, did you and Dave Schuster, and who else, have to bring him up to speed on what was happening in water? I mean Bradley's bill was ready to go [S. 484, 2/26/91], and Miller's [H.R. 1306, 3/6/91] was soon to be introduced. Then in March, everything was just flying. How did you get him to understand, and did he ever truly know what the issue was here?

Somach: Do you want me to tell you the honest truth? John Seymour is a man that I admire a great deal. I've met a lot of good elected officials. He is among the top on the list. He really cared
about these issues, and he really cared about all sides of the issue. Because he cared, he took the time. Dave always talked about his delegating things to me. He delegated he says, John Seymour, to me. The reality was that I really liked Senator Seymour, and I think that there was some reciprocity there.

He took the time. We're talking about a guy who came in on an appointment, had a lot of learning to do, not just about water, but about everything that he was involved with, including about the United States Senate. He knew this was important for California. He knew it was important for the agricultural folks, the urban folks, the environmental folks, and took the time. I spent, literally, hours with him going over all of the nooks and crannies of this thing. I would come back because there was time in his schedule. I mean this was a time when I literally was almost in Washington, D.C. every week. I've got some funny stories I'll tell about that are relevant to this later about those back and forth trips.

I would get a call, "The senator has some time tomorrow in the afternoon. Can you come out?" And, I would come out. "The senator is going to be so-and-so, and he has some time tomorrow morning. Can you come out?" And, it was a combination of his willingness, and my willingness to get together. He spent a lot of time. He agonized over this; I watched him agonize. There are some things I will tell you toward the end of this legislation where it was clear that he had been cut out of the final decision making that were just agonizing to watch.

I am an admirer of Senator [Dianne] Feinstein, I will tell you also, but I think the state lost in not being able to have two people of their calibre being United States Senators, I really do. Not to take anything away from Senator Feinstein, but John Seymour was someone that cared about the state of California, and worked very hard, and, I mean, agonized over these issues. Unfortunately, he'll kind of be a footnote in California history, I'm afraid, but I have a great amount of admiration for him, and the effort he put forth on our behalf, in my view, the state's behalf in terms of trying to make this a better piece of legislation.

Chall: Well, we might as well take this as it comes. Was it because the Central Valley Project Water Association folks didn't agree, and, as you said before, they thought a bill against them would never pass, that he was unable to compromise, move, do anything?

Somach: I think it was their rigidity. Ultimately, I would move forward with a consensus view. When I got my marching orders--. I had five marching orders. I basically knew the direction I could
take. But, it was essentially a very rigid view. It was a one-sided view.

I'll tell you, you've talked about all the drafts. We must have done dozens. I spent hours after Dave and I drafted the core of the legislation that we went forward with. I spent hours, and hours, and hours with the contractors and with their attorneys going over every word, and changing, and modifying as if there was no other side to this whole picture.

Chall: That's 2016, your bill? [Seymour bill]

Somach: Yes, well, it ultimately became 2016. I think there were two House bills entered at one point in time. It was as if there was no other side to this issue. It always amazed me because I was, of course, the guy that had to go sit down with the other side. What I was given was a rigid bill, to the tune of fine tuning things to commas and "ands", and specific words, and every one of them had been wordsmithed to the nth degree.

I would be at a meeting at a certain place, then I'd have to go meet with all of the contractors either down in Fresno, or I remember one time being up at Lake Tahoe late at night, and then driving back to catch a plane to go to Washington, and this kind of stuff. I would go through all this. I actually, at a period of time, just got tired of arguing with people about language, and I would just accept whatever language they wanted with the knowledge that I had to go negotiate with someone else, and that, in any event, I was going to have to come back out again. It was this rigidity in approach that seemed to be our biggest problem.

Chall: When you say they, you're talking about what, thirty or forty--?

Somach: The collective.

Chall: The collective. But were some of them who were crossing the T's, and dotting the I's, and setting in the commas were they just one or two of the members of the collective?

Somach: Yes, but they were people that had a disproportionate influence. We're talking about people out of Westlands. We're talking about some of the Friant contractors. They're very, very vocal people.

Chall: So, there were really just a few who were the rigid folks?

Somach: I think so.

Chall: But did they represent some others, many others who were less vocal?
Somach: I believe so.

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Chall: Was this communicated to others in D.C.?

Somach: Yes, in terms of this rigidity. That was being communicated not just to John Seymour, but also to the folks on the House side, Cal Dooley--.

Chall: [Vic] Fazio.

Somach: Fazio.


Somach: I can't remember now to be honest with you. I think Condit. I can't remember. We've had so many elections between--.

Chall: I'm just giving you names.

Somach: I can't remember. It seems to me that Rick Lehman was involved.

Chall: Often, they were at different times.

Somach: Yes, but those are the folks that we're talking about. But, it was communicated then, and I would go back. I mean, I spent hours with not just staffers but the congressmen themselves. Vic Fazio and I are friends. I lived, up until very recently, in his district. My partner is running for his seat right now and was the one he selected for his seat, or asked to fill the seat. So, these are people that I can spend time with. Cal Dooley and I have spent hours and hours together.

They also expressed frustration and an inability to communicate back down to the client base that things weren't as they were. The other person that was very frustrated was the lobbyist for the CVP Water Association. And, I need to tell you also, and I need to make sure that it's abundantly clear, she was integral to this process.

Chall: This was?

Somach: This was Kim Schnoor. While I did a lot without her because my role was different than hers, she was, in fact, the lobbyist, and also was viewed as the lobbyist. We're talking about a person of incredible skill, incredible knowledge, and credibility with the members of Congress. We're talking about Republican members as well as Democratic members.
She was trying to communicate to our clients that their position was too rigid and was very frustrated. At the same time we were working on this legislation, we had folks that were being hired by individual contractors.

**Mixed Signals Continually Confuse the Process**

Chall: To lobby?

Somach: To lobby, and they were taking different approaches. And, we had a few of the lawyers that were also making side telephone calls. So, it had the effect of... We knew about all this stuff mainly because all the congressional folks were communicating all of this to us and letting us know about it. They weren't accomplishing anything. In other words, we had control over what was happening because we were the mainstream path. Nonetheless, all that was happening around us.

The adverse effect it had was that there were two channels of communication going back to the client. There was what we were communicating to the client.

Chall: That, "You have to move."

Somach: That, "You have to move." Then, you had this other separate group reporting back saying, "You don't have to move. We can win this process."

Chall: "Because we always have."

Somach: "Because we always have, and we've hired so-and-so who knows so-and-so and can make it happen." They spent a lot of money doing that. The end was, of course, we were correct and they weren't. But, I know that the congressional folks were also trying to communicate what we were communicating back. They, themselves, had a problem, and that's because elections took place during this period of time. It was very dicey. In fact, as I recall, Rick Lehman lost his at about this point in time, and it all got caught up in this CVPIA stuff. They all were aware of the fact that this was out there for them, that this legislation had the potential to be a big problem during the elections.

I remember Cal and I had a number of conversations about this, and people were running based upon what was happening in this legislation, running against these congressional folks based upon what was happening. Remember, a lot of these folks were
Democrats. It was the Democrats that were doing this, so that made it even more difficult for them to deal with it. In fact, I'm positive Lehman was still involved because I remember he was in charge of the floor debate in the House on the bill.

A lot of times I would be on a plane with these folks coming back to California. We would talk for hours on the airplane about the problems we were having. A lot of it focused on the inability to get our clients and constituents to see what the real world was out there.

Chall: So, John Seymour was really constrained.

Somach: Oh, absolutely constrained. Although, he always said that, ultimately, he was going to do the right thing in spite of what he was being pressured to do. The problem was he wasn't getting any cooperation from a huge constituency.

**Governor Pete Wilson's Role**

Chall: What about any assistance from Governor Wilson? I understand that he wasn't involved; he was not supportive, that he just assumed--this is what I've heard from others--that no bill would pass. Since he was going to take over the Central Valley Project a bill didn't have to pass. He didn't give Seymour any support. Is that so?

Somach: Well, I know that he and Seymour talked a lot. So, I don't know that he didn't give Seymour any support, but again, they were dealing in two different arenas. There was a view that I think Governor Wilson had that he could obtain a veto ultimately from the president, and that the better way about it was the mechanism he wanted to go with and that was to obtain the CVP as a state project, and it would, as a consequence, obviate the need to deal with all these CVPIA related issues.

That was being communicated through a guy by the name of Mark Borba, as I remember, who had also obtained some of these lobbyists. So, he was a continual voice in this as we really progressed in the development of the legislation and became a big problem because we were continually getting second guessed.

The odd thing was no one in Washington was listening to any of these folks, yet the communication that was being sent back to the client base was that we shouldn't do this because all of our problems would be taken care of in Washington. I remember Kim and
I would say, "Who are they talking about that's going to be their savior?" We're in contact with all of the people. They're [members of Congress] in contact with our own clients telling them what we're telling them, yet the clients' view is that this mystical someone out there is going to come out and save them. The other lobbyists were telling them that we don't have to go along with what is being proposed by Miller/Bradley because there's another way to do it. Yet, there was no one there. There was no other way.

It was just the most absurd and ridiculous thing that I've ever seen. There was this separate communication: they are telling us we don't have to do this and we're moving in the wrong direction; we're being provided bad representation by Somach and Schnoor and whomever. Yet no one could ever identify who this was. I was in contact with every one of the representatives that were on our side working on this. Senator Seymour and I were talking routinely. When I wasn't talking to him, I was on the phone with [Richard] Golb, his aide.¹ It just was one of those very strange situations where there was this mythical thing out there.

Now, Borba had close relations with the governor. I know he was talking to the governor, and that was an independent voice which we all needed to take very seriously. But, the governor's office was very weird when it came to the actual negotiations.

When we sat around the table with the Miller-Bradley legislation as we got into the meat of these negotiations, I was as furious with the state of California as I was with anybody that was sitting around those tables and was pretty vocal about the fact that they were offering absolutely nothing, yet they were coming to the table pontificating about what should happen.

I remember a couple of very heated exchanges both--. In fact, I remember one in particular when I was in the governor's office in Washington, D.C. with his lobbyists sitting with Dave Schuster and Bob Will. Bob, I think by that time, could not represent the CVP Water Association. It was around that period of time because I think MET [Metropolitan Water District] told him he couldn't represent them.

Chall: He was asked to make a choice.

Somach: Yes. I was sitting there with the three of them and talking to--I don't know who--who said something to me about us not doing anything. Of course, I had just been run ragged doing something, and the state had done, in my view, absolutely nothing constructive in this process. I remember my peripheral vision leaving; I had none. All I had was this tunnel view of whoever was making a statement.

Something I don't do often, but when I do it, it's uncontrollable: I just became furious. I just ripped this person verbally. I remember Schuster and Will being amused about the whole thing and telling me that--. This was the governor's representative I was yelling at here, who was close to the governor, I might add, indicating it was something that needed to be done. They were glad that I had done it, and that they had not. [laughter]

Chall: That was an uneasy relationship too.

Somach: It was very uneasy. I will tell you, and I'll relay to you as we get to the discussion on Somach-Graff, more about the governor. Subsequent to all this, I've had conversations with the governor one-on-one at a couple of cocktail parties. We've talked about that whole period. Not that I agree with the course they were on, but certainly I understood at the time what he was doing. We've talked since then, and I've actually had some of the most charming conversations with him about this topic, and his recognition of the position I was in during this period in time. I appreciated the fact that he understood the position I was in at that time.

The Seymour Bill: An Honest Attempt to Solve the Problems

Somach: Let me tell you two things. What Dave and I put together, which ultimately became the Seymour bill and had been introduced in the House by, I think, Cal Dooley and others [H.R. 3876], was an honest attempt to solve the problem. In my view, it is still. If you take a look at what has happened, in fact--because that portion of what we drafted became a portion of the CVPIA. There were some twenty-six measures that were identified as projects.

Chall: The "techno-fixes"?

Somach: That's right. They were slammed by environmentalists, and I remember being belittled by Tom Jensen on them because he said I didn't understand that fish needed water to swim, which just
infuriated me because it was such a belittling approach to a very complex problem.

It was an honest attempt to address very serious problems in a systematic way. I believe that if you take a look at those provisions of the bill, they are the only ones that have actually been implemented or are in the process of being implemented. Everything else in that bill that's supposed to be so great hasn't amounted to anything but an expenditure of a whole bunch of money, but that nothing positive has occurred at all because of it.

I could get into that debate. But the bottom line was that those provisions we thought to be not just ignoring the problem and to my clients' benefit because I hit them hard about their rigidity here. They agreed to that, and that was a very expensive undertaking. That was going to affect how they operated the CVP. That was going to affect how much water they got. That was not an easy thing to sell to them. That was a very hard thing to sell. It was an amazing movement for them to agree to.

I didn't, at times, think we would ever get there at all. As a consequence, I think that gets lost in the mix, that is, that bill became part of the CVPIA, and if you take a look objectively, today, as to what's actually happening out there, it's probably 85 percent of what's happening in terms of actually addressing problems in the Central Valley associated with the Central Valley Project, period. It just simply is.

So, it was not an attempt to just cover up a problem and try to ignore it. It was an honest attempt, and an attempt that took a lot of effort on the part of the contractors to agree to, but they agreed to it.

Chall: So, it was kind of a point from which you could start.

Somach: Well, we argued, of course, that that was as far as one should have gone.

Analyzing Some Features of the Miller and Bradley Bills

Chall: While these other things were going on, there was the Bradley bill [S. 484] to consider.

Somach: Now, the Bradley bill didn't have any of that stuff in it. The Bradley bill approached the issue in a different type of way entirely. It was heavy on this notion of a commitment of water.
It was heavy on re-authorization language. My argument was that just throwing water at a problem doesn't fix the problem.

I understood that fish needed water. He [Tom Jensen] must have said that to me about a thousand times, that fish needed water, that my clients didn't understand that. I must have repeated to him every time that I certainly, and my clients certainly understood that fish needed water, but what he needed to know is that they didn't need all the water. It was too simplistic to just throw water at the problem.

I think that the evidence of that is that those physical "techno-fixes" as they call them are being done and they have to be done. And, in sense, how those things work or don't work will dictate how much water needs to be thrown at the problem. It's not that there wasn't going to have to be a commitment of water. The problem is just so much more complex than we liked to believe it to be; therefore, easy fixes on both sides of the issue do not answer the problem.

Chall: In addition to water, you had the contract renewal dates, and things of this kind. Eventually, I think, even Seymour was willing to make some of these changes.

Somach: Well, after a long period of time. Remember, this thing played itself out over two years of intense argument and debate. I don't know that I was doing much of anything else during this period of time. I know how exhausted I was. It had all kinds of stuff in it. It became kind of a Christmas tree of issues associated with the CVP that people had wanted to address for a long time.

The dynamics have changed so greatly. I heard that George was going to get all those things he had not obtained in the RRA [Reformation Reform Act]. When they cut the [RRA] deal, which was kind of a negotiated deal, obviously, George Miller didn't get everything he wanted to get. So, I heard that this was his attempt, now that Tony Coelho wasn't there to protect us anymore, to get everything he couldn't get then, which, of course, my clients viewed, I think legitimately, as breaking the deal. Because there had been a give and take in the RRA negotiations and to come back less than ten years later and try to take everything you didn't get in the prior negotiation seemed to be a break of faith because we had conceded a lot of stuff in the RRA in return for their [Miller] giving up on certain things.

But, obviously, this is politics, and it's not equity so as a consequence, whether something is fair or not--. I mean that was part of it so if you take a look at some of the issues--they went toward contract renewals. We spent a lot of time on that
language of contract renewal as to exactly what it should look like; how many years, whether renewal of contracts after initial terms should be mandatory or discretionary—that type of language. There was a question of when environmental review had to be done, before or after.

In looking at the Miller and Bradley draft, there were just legal problems upon legal problems. Even if they got what they wanted, it would be horrible. In fact, today, that's part of the problem with the CVPIA.

Later on, when this thing looked like it was headed toward where it was going, at one point in time, I said, "For God's sake, at least go back and fix some of these problems. I mean you've got language that makes no sense. You've got phantom sentences that refer to sections that no longer exist in the draft. You've got ambiguities built upon ambiguities. It appears to me you're going to hurt my clients' interests, but for God's sake hurt them where you intend to hurt them. It's the unintentional hurt that you're going to cause because you've done such a sloppy job in drafting that we need to fix."

They didn't go back and fix any of that stuff. We suffer as much from that today as anything else. It's just the absolute sloppiness of construction.

Another section of the legislation that seems to me to be bad legislation was, for example, the section that requires the Programmatic Environmental Impact Statement to be done.

Chall: Right.

Somach: At one point, I said, "You've got to take that out. That makes no sense."

Chall: But, you put it in your Somach-Graff draft.

Somach: What we did in the Somach-Graff draft was attempt to clarify what otherwise would have been an impossible situation. You've got to remember that by that time, we were losing. It was gone. What I was attempting to do at that time was to make as much sense out of this as possible. We're kind of getting out of sequence here.

Chall: That's all right. Don't worry about the sequence, just get the information out.

Somach: The problem we had at that point in time was some of what I was just saying. One of the things we tried to do in that [Somach-Graff report] was to try to make some sense. For example,
contract renewals, the way Miller-Bradley had that done was just absurd. They had site-specific Environmental Impact Statements prior to the time that they did the programmatic document. Everything was backwards.

The first effort I made was to get the Programmatic Environmental Impact Statement out of the whole thing. I said, "Get it out of there. It makes no sense. You've already got a project. You don't go back and do an Environmental Impact Statement after the fact." I said, "It will cost a fortune. You'll never ever do it right." I had Beard convinced of that and later on I talked to him about it.

He also, later, told me that he decided to go along with it. It came out of the Bradley--Tom Jensen draft. He said he went along with it because he thought it could be used in a---. What did he tell me? You know, one of the things they've never done in the CVP was go around and put together a management document, and he thought it could serve that purpose, so that's why he left it in. That thing is still not done. It's in draft form.

They've put together something that is incomprehensible. It doesn't relate to CALFED [California Federal Bay-Delta Program]. It doesn't relate to Bay/Delta. It doesn't relate to anything else that's happening out there. It is humongous. It doesn't focus. It's just this very costly document that will get litigated if it ever becomes final. It just has been more of a problem than it's worth. So, that was the point I was saying. You're going to have all these problems; why are you creating thing like that.

Once I was told it was going to be in there, then the question was how do you make everything else make sense. So, that was some of the language that got drafted in terms of, in particular, contract renewals because I knew contracts were going to be coming up. I knew the programmatic document would never get done before the contracts expired. We needed to go forward. Originally, the way I drafted that language [Somach-Graff] was in a manner that was to try to make some sense out of it.

The idea was, okay, when these contracts expire you enter into interim contracts. What you do then is wait on the interim contracts until the programmatic document is done, and then you'll do long-term contracts on a site-specific basis that relies upon the programmatic document. In other words, trying to put things in some kind of logical order.

Well, then, when Interior got a hold of this thing, not only did they want to play games with the whole process, they wanted to
do an environmental review on these interim contracts. When I drafted that, the concept was you can't do that. You shouldn't do that because you're going to do that ultimately, but you've got to put the cart behind the horse not before the horse like otherwise was being contemplated. The other thing was the interpretation. Interior wasn't involved in any of the drafting of the legislation and is being influenced now by various interest groups which has compounded the mischief.

What we tried to do at that point in time was just kind of fix some of these problems. Rather than argue about whether contracts should be renewed for this amount of time or not, just assume that they were and try to draft language that made sense so you could actually implement this stuff in a certain logical fashion. That was part of what we were attempting to do at that point in time.

If I can go back a little bit--

Chall: Yes, anywhere.

The Many Contentious Meetings

Somach: Basically, what happened was this. The focus was originally on Miller, then it shifted to Bradley because Bradley got his legislation out there. So, he sponsored on the Senate side all these meetings where now, you would call them stakeholder meetings, but at the time they were just meetings with people invited to them.

It was very strange. They were strange sessions. I went with Gary Ellsworth and Jim Beirne. Rich Golb was a very young guy who was a Seymour staffer. In addition to working for a senator that was coming in new, he was new. He had worked for Senator Thad Cochran and worked on ag issues, but he didn't know anything about water. It was a situation of educating him on all this stuff. There was an interesting dynamic between him and people like Jim Beirne and Gary Ellsworth who had worked on this subject for years, and years, and years, for their entire professional life. That was an interesting dynamic in and of itself.

The bottom line was that certainly Gary Ellsworth, especially being the minority counsel at the time for the full committee [Senate Energy Committee], was a very important person and worked with Jensen. I'm trying to think. We also worked with
Bennett Johnston. Johnston was the full committee chairman, and we worked with his people also.

Gary was very important. As I said, my role was not to become the expert on all these legislative issues, but just to get down and get into the nitty gritty. I had to rely on Gary to do the politics part from our perspective. And, he worked closely with Kim. He is a very smart guy, very knowledgeable, good lawyer. So, he and I talked and spent a lot of time together about it. Basically, what happened was we would go to these meetings, and he would do an introduction. Then it got thrown to me. What we were supposed to be doing was commenting, section by section on the Bradley draft, and that's what I would do.

Boy, we never got very far in any of those meetings. Things got so contentious so quickly. There was no real control being exercised, and it was mainly because Jensen had a point of view. So every time I would critique what was happening and an environmental representative would jump on the band wagon, it would get contentious, and he didn't exercise much control in terms of focussing the dialogue--keeping it on track. So, we spent hours, and hours, and days, and days, in the most contentious type of meetings. I can't even tell you how exhausting that type of work is.

Chall: Well, Mr. Boronkay said that there were such battles among the staff; you could never get down to the substance.

Somach: It was personal.

Chall: Personal, that's what he said.¹

Somach: Bob Will was personally attacked. A guy who I have a great deal of respect for was personally attacked in these meetings. In my entire professional career, there were very few times where I lose my temper because you're not very effective when you lose your temper. I remember once in my entire career coming over a table to grab someone, and it was in one of these meetings. It was a guy by the name of Ed Osann.

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Somach: I think he worked for National Wildlife [Federation] as a lobbyist. He made some smug comment in a personal attack on Bob,

as I recall. I came over the table. I can't remember who was sitting next to me; he grabbed me and held me back. Jensen took one look at me, and he adjourned the meeting. It was on a Thursday. I walked out of the meeting, got a cab, and went to the airport, never said anything to anybody, and went home. I think I went back to D.C. on Monday. I don't remember, but I'm pretty sure I did. That was the level of discourse.

Earlier on in this process, I had had some meetings, for example, with George Miller, with Dan Beard. I spent a lot of time. As I said, I liked Dan, and I liked George. I liked Senator Bradley a whole bunch. I liked Tom Jensen. I like all these people on a personal level. [laughter] Period. I will tell you that. Now, my clients, quite honestly, think these people are evil people. I don't share that view with them, and that may be part of the friction that ultimately was created with my clients because they're aware of my views. I think that this notion that people are personally evil doesn't really help very much in terms of a process.

So, I remember sitting with Senator Bradley in his office, and I was honestly trying to explain that I thought my clients had come a long way because he was taking the position that they hadn't moved very much. I did not agree and do not agree with that. I thought they had moved an amazing distance over a very short period of time. This all was happening--. Even though it was a year or two, we're talking about decades of position being changed.

The Water Transfer Issue: The Metropolitan Water District

Somach: I remember his telling me, in particular, that we had to have water transfers out of the CVP. I remember that really well. I said, "I don't know that I could ever get them to agree." Of course, he wasn't listening to that. He just said, "We're going to do it if you don't do it." I said I'll try, and he said, "How long do you need?" I remember giving him a time period. What I did then was sit down with Carl Boronkay. I had meetings with Carl, one-on-one meetings, where we worked out what ultimately became the core of the transfer part of this legislation. It was he and I sitting in a room over a period of time.

Chall: Is that because Boronkay went to one of Bradley's hearings and said, "What I want out of the legislation is water transfer"?

Somach: Yes.
And, apparently, according to Boronkay, this shocked all the agricultural folks because they were always assuming that under any conditions he would be on their side. So, as a result of that, I guess, with Bradley telling you, maybe you understood that this was going to be a necessary part of the legislation.

Well, there was so much manipulation going on during this period in time in terms of alliances. Everybody knew that what they had to do was isolate the CVP contractors who are mainly agricultural contractors. One of the ways you isolated them was by trying to neutralize the State Water Project contractors and in particular trying to take the large municipal water users and pull them in on the side of Miller-Bradley, what became Miller-Bradley ultimately.

So, you know, the way I viewed it was that Carl and MET were for sale, and it was who was going to offer them the best deal. He knew it. Carl, again, was shrewd, and he knew what was going on. You know, at various times, he alienated the Miller-Bradley folks by shifting his position because we were offering a better deal on something. So, the realpolitik of the thing was real apparent to me. And, at a certain time, we recognized that we were going to have to come up with some kind of a transfer provision because that was what he wanted, and we couldn't resist.

I don't know if you recall, but the Seymour bill, I believe, at one point in time, had a transfer provision in it. That's because we understood that in order to get any support from that element of the California constituency we were going to need to be able to offer something.

I understand you worked it out.

Well, we worked it out with Carl.

And [Tim] Quinn?

Yes, and Quinn. That's right. It was the two of them. There were times when it was just Carl and I sitting in a little room. I think it was actually in Bob Will's office. It was a little conference room like thing. I mean it was a little tiny room with no window, or not a big window because I remember. Part of the problem was that I had no approval from my client to do it. When the word got back that I had cut this deal, all heck broke loose. It just so happened that there was an ACWA [Association of

1Boronkay-Quinn interview, pp. 33-37.
California Water Agencies] conference going on when it hit that I had cut this deal.¹

Now, remember, I had told you I had the okay to talk about this, but not to necessarily come up with a fait accompli. But again, the dynamics of the process required me to say okay. Again, this notion of identity, lost identity--. When I said okay, that meant the federal contractor said okay. Well, I remember being on a phone call, and it was fortuitous that because of the ACWA conference, there were a lot of my clients there, all in one place. In a very short order, I was able to get some of the key contractors on a telephone line.

I remember Jason Peltier was on the phone. Jerry Buchert was on the line. Certainly, Ken Kuney was on the line, and other key lawyers, and directors, and managers. I basically said, "Yes, I've cut the deal." Then I quit. This was the first of two times I did this in the process of this whole thing. I quit. I said, "In order for you to deal with this, I quit, because I don't want you to be saddled with me. You've got to decide whether you want to adhere to this deal or not. So long as I'm involved in terms of your ongoing credibility back here, we've got a problem. Therefore, I quit."

I remember, after I laid it all out and explained everything, I quit. Then I hung up the telephone. I actually thought, I'm out, and I was ecstatic about being out. It was serious because there were a lot of angry clients there about me having gone off on this frolic of my own and committed to transfers. I thought, this is great. I'm out from under all of this stuff, and I quit. I'll never forget that because I thought, "I am really out."

Well, the net result of that was no one was letting me quit. They ended up collectively ratifying what I had done. I think there was one final fine tuning that happened at ACWA because MET representatives were at ACWA, and they made some minor modifications of what Carl and I had done. Carl was in contact with them. Then, Carl called me and said, "I'm not going to agree to these modifications unless you're okay with it because as far as I'm concerned the negotiations were with you."

There was a lot of that going on. It was the fact that people, I felt, on all sides of the issue, in terms of their good faith with me, played things pretty clean. And, that was an example of it when Carl came back and said, "I've negotiated with

¹Boronkay-Quinn interview, pp. 63-66.
your clients, and here's the deal. But, I'm not going to agree to it unless you're okay with it." I don't remember what it was, but again, being a lawyer, I said, "Look, if my clients are okay with it, I'm okay with it." I remember telling him I appreciated the fact that he called me; I told him that I had quit, and that it was okay.

Chall: Now, let me ask you--. This all came about in late November, middle of November, and then on November 21 [1991], just shortly after that meeting, Seymour introduced his bill. Mr. Boronkay said that he was quite upset by that because he had told you that it wasn't really finished. I mean there were some uncertainties in the language that needed some clarification, and you said, in essence, "Don't worry, we have to move it. We have to get something on the table. We have to move; we'll clear it up." But, Boronkay said he never felt that he trusted you all again.

Somach: Well, I'll tell you. There was another exchange with Boronkay. A lot of that reflects the fact, again, that I didn't have total control over anything that was happening. There were other influences being placed on the process and the individuals. Among other things, Graff was really upset.

Chall: Graff, too, said he was upset.¹

Somach: The environmentalists did not like that transfer language. They didn't like that at all. At that time, he [Graff] was taking shots at me as well as Boronkay about that. This was at a time, remember, when I had just quit. So, I had just disengaged. Some of those decisions that took place there--. There was a period of days where I didn't have any involvement in what was happening.

I actually thought I had gotten myself out of it. I mean I was very naive in that regard that no one was going to let me get out. I was starting to strain relationships among the clients. I was in a position that a lawyer doesn't ever want to get into when he's representing people in terms of ethical obligations. I wanted to get out badly. I had the naive view that I could just say, "I quit. This is a nice neat place. You guys pick it up from here." Nobody understands that. And, Carl, I'm sure, doesn't know all of the intricacies of all that stuff.

Chall: No, that's why this is all interesting.

Somach: On top of that, I was not in total control. There were other influences, including other lobbyists and independent contacts that were being made. There were big donators that were calling Seymour and Wilson to do all kinds of stuff during this process. I think, ultimately, the proof of that is what happened with the Somach-Graff deal. My inability to follow up on that entirely was a result of that inability to actually have control.

The bottom line was I never was an independent player in this process. It wasn't like I was a Westlands or a MET so that even if the collective didn't agree, I could on my own say this is what I want. I didn't have that much luxury, ever. Because, if the collective couldn't agree, I couldn't do anything. That was one of the reasons I was uncomfortable.

So, you know, that's all part of the baggage that you carry as you go through that. But, it was certainly never my intent to do anything but keep faith with the deal. And, I was way out on a limb with the deal, itself. I was trying both to adhere to the agreement I had made with Senator Bradley as well as the agreement that we would ultimately reach with MET. I tried to be honest in terms of my problems.

One of the problems that had occurred in this thing was, quite honestly, that people always ascribed to me much more power than I ever had because my power is derivative, it's not direct. I do with it what I can. But, throughout my career, there has been a problem with people perceiving me as being much more of an independent player than I ever am. I am not an independent player; I refuse to be that. People really don't want to even know what my own view on some of these issues are. In some respects, my independent view on anything is irrelevant. My professional view and my representational view is everything; my personal view is absolutely irrelevant. It's no more relevant than anybody else's view on the street.

Chall: Jason Peltier, as you know, was very bitter about MET because Boronkay finally went over to the so-called other side.

Somach: To the dark side, that's the name of it. [laughter]

Chall: To the other side to get a better deal when all MET wanted was some way to get water transfers, and he just wanted a bill that would go through. But, Jason Peltier said that there was a
bitterness that he felt toward MET that probably couldn't be healed.¹ I wonder whether you felt that way.

Somach: Did I feel that way?

Chall: You were working for that CVPWA, so were you upset during the period of time as MET would move from one side to the other?

Somach: Well, I'll tell you. Again, I really care about my client. So, from that perspective, yes, I guess you could say I was upset. But, being upset, it doesn't help you professionally to do your job. I viewed them as being opportunistic, and, in that sense, I understood what they were doing. And, it irritated me that they were involving themselves in something that otherwise had nothing to do with them, and that, in doing so, they were willing to sell out what I thought would have been their natural allies in this process, and their historic allies in other areas.

The Urban Water Coalitions Change the Dynamic

Somach: And, there were others that I felt that way about. I thought that some of the individual water districts down in the southern California area represented by, as I recall, Rich Attwater, and some of the folks that Hal Furman were representing down there—. I thought that Patricia Mulroy who represented the southern Nevada folks, and the Las Vegas folks—.

Chall: Oh, all right, so, you're talking about the urban water people who just formed an organization. [Western Urban Water Coalition]

Somach: That's right, and their organization was headed by Guy Martin, another friend of mine who I considered to be a good lawyer, and I like him a whole lot. But, I thought they were being very opportunistic and were throughout the process. I thought that it was not in the best interest of water, to the water industry, for them to do that. Was I upset? Yes, I was upset because their being opportunistic was working to the disadvantage of my clients, but that's what it was. I understood what they were doing. They felt that was in the best interest of their clients. After all, that's what they were doing.

It's immaterial as to whether I was upset. They were being opportunistic. They were a problem because they were being opportunistic, and we needed to deal with them in that context. Jason is much closer to the client group and wasn't involved in having to do the work, so he had the luxury of being upset. I didn't have that luxury. I had to view it as what it was. It was being opportunistic. And, my just getting on some kind of a soap box and yelling at them about it didn't change the fact that they were going to do what they were going to do. He [Peltier] had the ability to get up on a soap box, try to change them from some moral imperative view, but that wasn't my role. Our roles were different. That's the way I would characterize that.

Chall: This probably indicated that the dynamic had changed, that the urban water people were now in a different place. I mean, as Quinn points out [in his interview], you've got three equal players here--or almost--that you didn't have for many years. Before, it was just water and agriculture.

Somach: It was really two-thirds against one-third in that sense. It was water versus the other side. It did change the dynamic. It changed it greatly so that instead of being able to just do my job looking at the one side, I now had two fronts to wage this war on. It was a war; I think that was a good analogy. It had really now become a two-front war, and that was the practical problem that I was presented with in terms of being the guy doing the day-to-day battling.

Chall: Two-front meaning you were fighting--?

Somach: Both the environmental side and the urban water side, and that balance was interesting. It was a significant problem. During this period of time when we were still around this big table I was telling you about, where we negotiated--. I want to relay one thing to you to give you a kind of an idea of the dynamic around that table. I remember that Bradley and Seymour came into a room where we were all meeting and each made a speech about how what we were doing was important, and we could work it out, and all this other kind of rhetoric. I remember looking at the two of them, and then the two of them left. They left us with exactly what we had before, an unorganized group of people arguing about every little thing.
Putting It All in Perspective

Somach: The story that I wanted to relay I think is kind of indicative of what was going on at the time. I spent very little time at home. I mean I was literally in Washington most of this time. Although, I was traveling a lot. Another person might have stayed in Washington, but I was trying to get back to my family, and I did have other clients that I was trying to work for during this period.

On one of my trips home, I was with my wife, and we were watching television. We looked up at one point and there appeared to be a dark stain in the rug. The bottom line of all that was our toilet had overflowed. It had gone right through the whole back part of our house and was now flooding the living room, or the family room, where we were sitting. I'm talking major water here. It was so major that the insurance company ended up paying for all the damage; they had to pull up all the rugs.

The damage took place at night, but I went back to Washington the next day leaving all of this with my wife. I got there and spent, I think, three days, and it was a Thursday when I was told we were supposed to spend all weekend negotiating, which no one had ever mentioned to me before. Normally, that wasn't new, but all of a sudden these speeches were made. We're now going to stay in this room all weekend. My wife calls me and tells me that all the furniture had to be moved over the weekend, and all that goes with it. She was very understanding about my situation.

My wife was very understanding. She didn't tell me to come home, but I could hear in her voice--. I've been married thirty years. I mean I've been married a long time. I remember hearing her voice and going, "I've got to go home." I remember telling Jensen exactly what happened and that I've got to go home, and I really apologized; it has nothing to do with the negotiating dynamics, but I've got to go home. The flight from D.C. stops in Chicago, then it goes to Sacramento. It's only an hour and a half or something, from D.C. to Chicago. By the time I got to Chicago and called my office, Senator Bradley had already called my office and asked for my home phone number.

I quickly called my wife and said, "You may get a call from Senator Bradley. For God's sake make sure you aren't embarrassed to tell him that I'm coming back because we had a backed up toilet, and I've got to move furniture." The next day, on the congressional floor, George Miller got on the floor and made a floor speech where he alleged that in the middle of these crucial
negotiations, the key federal negotiator left, had to go back home. Vic Fazio knew why I went back. Because, I was bemoaning real life problems to him. So, he got up and said, "No, it was an urgent thing."

So, I've always been, number one, amused by this floor statement, which you could read in the Congressional Record, about me going back home. And, they've got all these accusations going back and forth. It has all to do with a backed up toilet--a "real life" problem. But, it gives you an idea of the tension, how acrimonious the problem was, and just a feel for how things went on, and the tension everybody was under, and the commitments of time that had to be made toward this process. That circumstance and what derived from it probably put the whole thing in perspective.

I will tell you that after that I viewed the whole process differently. When I read the floor debate, I went, "Boy, these folks are working in a whole different world than I live in, and I have to operate in it day by day." It was even more reason why I didn't want to do this type of work.

Chall: But, this was early on, wasn't it? Where are we now, '92? So, it was probably after Bennett Johnston's bill?

Somach: Well, no, before the chairman's mark. It was when we were just dealing with the Bradley bill [S. 484]. It was already that tense and that acrimonious of a situation. In time context, it seems everything has run together, in a sense, over the years. Absolutely, it was still in what one would call an early stage. I tell you, I remember those stages because they were so exhausting and time-consuming, the early stages where we just had the one bill. It was before Miller came up with his bill [H.R. 5099, 5/7/92], before Bennett Johnston came up with the mark, before other bills had been floated in the process that all this was happening. It was very early on in the process.

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1Senator Bennett Johnston, chairman of the Senate Energy and Natural Resources Committee, distributed his mark (a CVP bill) on February 20, 1992. It was supposed to replace Bradley's bill.
The Seymour Bill Passes the Committee and the Senate

Chall: So after the mark came out, I guess the Senate Energy Committee had to decide how to pass a bill into the House. There were the Bradley bill and the mark and Senator Seymour's bill. They had meetings to determine which bill was going to go out onto the Senate floor, and the Seymour bill passed out of the committee [March 19, 1992].

Somach: Well, it was an interesting thing. But, it was clear at least to me at that point in time, particularly in retrospect, and here I'm being educated by some pretty savvy people like Gary Ellsworth, like Kim Schnoor that something was going on here, and that this game was not over. And, there was a dynamic going on here in terms of maneuvering and positioning oneself, moving forward. Remember, the Senate is a totally different body than the House. Minority senators have much more of an ability to affect things than do the folks in the minority party in the House.

The shift, then, obviously, went back to the House. As you recall, that's the way the dynamic shifted. There was all this flurry initially in the Senate up to the chairman's mark. We did all this work trying to convince people that's not what should happen. The Seymour bill moves forward, then what you're left with is nothing in the Senate--.

Chall: Except the Seymour bill.

Somach: Except the Seymour bill, and now you go to the House.

Chall: What did you think had happened?

Somach: Well, I think the dynamic was clearly that what they wanted to do was to get something going in the Senate and not get blocked. Because, remember, what would come out of the House would be a bill that then would go to conference. Then, all the rules change, and the whole dynamic changes dramatically. My clients took it as a big victory. See, that's part of this disconnect. We tried to explain to them that it was not this big victory, that the other shoe clearly had not dropped here. They did not believe me.

Chall: And, apparently, from what Richard Golb says, at that point, Seymour was willing to make some concessions, but that nobody was allowed to put in any amendments at all. The Seymour bill had to
go out exactly as it was. So, the Seymour bill went out unamended.¹

Somach: It was, as we know in retrospect, a pretty shrewd decision on the part of the folks running the Bradley and Johnston staffs.

The Omnibus Water Bill, H.R. 429, and Its Ramifications

Chall: You think they had really worked this out? I mean that was a plot? Were you concerned that everything was going to go into [H.R.] 429, that is, the so-called omnibus package that was out there waiting in the wings that all the other western senators wanted?

Somach: Well, you see, that's where you start really getting a disagreement between myself, Kim Schnoor, and our clients. And, that was we [Schnoor and I] could see where this was headed, and it was all of a sudden going to get bigger than anything. What was important was California is in the political dynamic. They were going to have this powerful, powerful force in the broader bill; the hostage taking that took place was going to have much more of an influence on what the end result was than anything else that was out there. It started to become very, very apparent that that was out there, yet my clients never saw it.

Chall: Bradley had said this very early on. He was going to pass a bill and 429 was going to be in it. His bill didn't get passed, but when Seymour's went out, it was amended into 429.

Somach: The dynamic was there. With hindsight, I can tell you I understood this earlier than, perhaps, I did. I'm not sure when it became apparent. I remember that Kim was lecturing me mightily at that point in time about what was going to happen. We attempted to communicate that to our clients. The more you attempt to communicate that type of information, the more suspect you become, and your motives. It gets personal in that regard. People are not unmindful of the fact that I actually have personal relationships with some of the people on the other side where I know them and I'm friends.

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¹Golb interview, p. 31.
Somach: It was apparent that this, as I said earlier, was the first shoe. This was not over, 429 loomed out there. It was very difficult to communicate this to the clients because the clients looked at this as a victory. I must admit I looked at it as better than the alternative because had one of the alternative bills come out we really would have been sunk. There would have been no hope. This allowed us to view the battle as not being over, and, in fact, it was not. The battle was not over.

It was a gamble on the part of Bradley to move the way he moved on this on the Senate side. It ended up that he acted appropriately, but I mean I don't think, from his perspective, that the maneuver was going to work. It certainly was better than any of the options, so I felt we had a victory at that point in time even though we understood that there were potential problems and that this war was far from being over. In fact, we were just evolving into the next stage.

Chall: Evolving into the next stage might have meant that you would have had to give some. There would have to be some compromise there somewhere.

Somach: But, remember, the problem with the victory was that it steeled my clients a little bit in terms of what they were going to be able to achieve. One of the things it did was it, again, made them more rigid than anything else.

Chall: Say that again.

Somach: Well, having won what they wanted on the Senate side, they thought that, in fact, this was a much broader victory than it ended up to be. It created a reinforcement of taking a more rigid and less compromising approach as we moved into the discussions on the House side.

The Miller Bill H.R. 5099: Opposed by the Agricultural and Environmental Committees

Chall: Miller, now, had to have a bill of his own. I mean there had to be a House bill so that there could be a conference. So, he introduced H.R. 5099, which is somewhat similar to the mark, apparently. And, he held hearings. It was at that point that the valley Democrats opposed it--that's Fazio, Lehman, and the people that we mentioned earlier. Now, the environmental side apparently thought the bill had been weakened after Miller made changes to appease the valley Democrats. The growers were angry with the
valley Democrats despite the changes. Tom Graff calls this "the historic compromise for a day." But, this seemed to indicate that no bill was going anywhere as far as I could tell. Is that what was going on?

Somach: There was a deadlock there. Actually, I had the view that this legislation, in all its guises, was still moving and that it was not going to stop. It was clear to me that this was not going to deadlock. It was ultimately moving forward, and that it was going to move forward in the direction we didn't like. That was absolutely, abundantly clear to me. I remember this very well. Part of the problem was we had less and less impact. We were talking and no one was listening. We were having less and less impact in Washington. They didn't understand.

The worst part was that the folks that were moving forward didn't really understand. Remember, early on, I talked about the disconnect between people in D.C. and water in California? Tom Jensen doesn't have, even now, a clue, in my view, of how the CVP operates and what water in California is all about. That was part of the problem. This was moving forward in a manner that made no sense. There was going to be a lot of people hurt unintentionally.

I don't remember if Tom [Graff] called me or if I called Tom, but I remember very clearly that the environmentalists weren't entirely happy with what was happening. So, it appeared to me that there was something that could be done. I remember the conversation I had. The way I remember is I called him, but that could be wrong. I just don't remember.

The Somach-Graff Negotiations: The Rationale, the Consequences

Chall: We're getting into Somach-Graff right now. So, you're saying that you thought that it might be a good idea, that you might have called him. But, Jason Peltier remembers that the G-4 group thought that something had to be done.

Somach: No, actually, I remember that. Those discussions, I remember well. That G-4 was formed out of the process. Number one, by

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1Graff-Yardas interview, p. 79.

2All interviews in the CVPIA series discussed the Somach-Graff negotiations.
this time, I was suspect. I was having a devil of a time because I had people going every which way and direction. The decision was why not put together a group. G-4 was a group of four, which ended up being more than four to begin with, representing key attorneys from the three areas in the CVP, plus myself, so that's four.

Chall: But, Peltier says that he thinks that the G-4 recommended that you and Graff work together.

Somach: Yes, except they never recommended that; I can assure you that's not the dynamic of the group.

Chall: So, how do you recall it?

Somach: I recommended to the G-4 that we do it that way. And, I remember saying, "This has got to be me doing it because you've got to have deniability. And, we've got to advertise the fact that this is not the CVFPA meeting. This is Stuart Somach meeting. And, what I need is your permission to do that because I'm a lawyer, and I can't just do that. But, it can't be you because I have no idea what's going to come out of this thing."

My notion was, and this is what I proposed exactly to Tom because he had his own coalition that he was working with. I said, "We've got to come out of this thing. And, it's got to be with the recognition that whatever we come up with, we'll endorse even if our respective constituencies don't like it, even if they don't want to do it. We have got to say this is the best we can do." Basically, it was a notion that each of us, or the two of us, had our independent credibility with the decision makers back in Washington, D.C.

There was a thought that if we came up with a proposal that it would take on independent life regardless of what our clients said about it. We knew that was going to happen, and that was a very dangerous thing to do for either of us. What I wanted was permission from G-4 to just do that, with the recognition that, again, I might be looked upon as the enemy. This was another one of those things where I was trying to sever this connection. I knew that this might end any future representation I had of anybody in the CVP. I viewed that half as a good thing because it would get me out of this again. And half, I knew that it was a bad thing in that I was really treading on very dangerous grounds. But, at least, I needed the approval, and the authorization, and the okay to do that. But, that was the way we set it up.

We set it up. This would just be Tom and I. It wouldn't be the enviros. It wouldn't be my clients. We would come out with
it and throw it out there. And, whoever wanted to take shots at it could take shots at it. But, if Miller-Bradley, or anybody, wanted to adopt it, they could adopt it. There was a big danger in that for my clients because I might agree to something that they didn't like at all. There had been some past history of me, in fact, agreeing or, at least, proposing things that they didn't like at all, and our not going down that road. So, there was that risk.

Chall: So, this was a way of moving something forward that you felt might be better for your collective than 5099 or 429 that you thought might pass?

Somach: It was moving.

Chall: And, therefore, you'd better get something out there for your clients if you could?

Somach: That's right. It was moving without us, and it was moving without the environmentalists because it was not what they wanted. The only thing I could think of was, well, what about another alliance? Remember what we talked about? It was just being opportunistic. I could see the opportunity there.

Chall: To get the urban water people out of it?

Somach: Well, the opportunity was to cut a separate deal with the enviros. They were upset with the urban folks. They were mad, at that point, with their inability to control what Miller and Bradley were doing. And, there was a little bit of that going on. I thought this might be an ability to come back. It was a recognition that, yes, I was going to have to concede some points that the environmentalists wanted that otherwise I wouldn't concede.

And, I knew that, but I thought that it was a lot better because I could control that drafting much better than I was ever going to be able to control anything that was happening in Washington because they were now an independent machine moving forward. All of the controversies, and the fact that everybody was fighting, and the fact that the state wasn't taking any position, had empowered all these staffers and all the congressional folks to do what they wanted.

There had been so much acrimony that they were numb from listening to us. So, they were moving forward. What they were moving forward with was not anything that was good. But, I was convinced they were moving forward. If the drafts they were working on had been enacted, it, in fact, would have been
infinitely worse than what, in fact, was enacted, which adopted some of the principles out of Somach-Graff.

But, you see, it put me in a position where I was going to have to cut deals with Tom that I knew my clients weren't going to like. And, I didn't want to bind them to that, so I wanted to get permission to cut those deals, to put something out on the table with the ability for my clients to say, "We don't like it." I told them, the danger was that I thought I had enough credibility that it might have a life of its own, so they better be darn certain that was something that they wanted to do before they do it. But I remember saying quite honestly, "I don't know what else to do." That was basically my last effort.

And, I remember saying that to throw myself at this problem, I may be the victim of this process, but so be it. I'm willing to do that. It meant not representing them, but I had other clients. I knew I wasn't going to starve to death. But, I knew that it was really going to create problems for me. It had that potential. And, it did actually. It really did have that adverse impact ultimately upon my representation of certain elements in the CVP, period. It had that exact negative effect.

Chall: That's going on today? Which element or elements?

Somach: That has gone on until today. You know, who I represent has a lot to do, at this point in time, with that CVPIA negotiation process. I'm no less busy, period. I don't represent the CVPWA anymore, and there's a reason for that, and it stems right from that decision. I knew that at the time I made the decision, but we saved a lot of people in that process. And, I'll go through with you what that thinking was in that process in the revisions we made.

The Stakeholders: Affected and Disaffected

Somach: We saved the Friant folks a whole bunch, yet they were among the most critical of the effort, ironically. In fact, we saved them, and the environmentalists later told me that we saved them, and they were too stubborn to understand that they had been saved. That whole Friant provision in the CVPIA came out of Somach-Graff, and it was me attempting to save them. In lieu of forcing flows. The environmental position and all the legislation that was being proposed, at that point in time, was to force releases out of Friant between Gravelly Ford and Mendota Pool. The fact that the legislation says you can't do that, and that in lieu, you do these
studies, and that they [Friant] have to pay a surcharge on their water all came out of Somach-Graff.

But going into Somach-Graff, that was their fear, that this legislation was going to force them to make releases. That all went away, yet, you know, they were some of the biggest critics I had about moving forward in that process. Tom had a view that it was important to get money. So, we negotiated the money provisions in the bill.

We have a lot of [electric] power allocation here [Somach-Graff]. The power contractors had not been a big player in any of this, but the surcharge out of the restoration fund, which came out of the Somach-Graff proposal, had a very heavy increment allocated to power specifically. My partner, Dennis De Cuir--. This firm is general counsel for the Northern California Power Agency, which is the largest municipal power organization in the state. And, we took a look at that legislation. And, I remember that Tom just didn't understand the great impact that those provisions would have on the power community.

So, Dennis and I sat down, and we went all through that. We modified the provisions to be more benign to power. But, it was the restoration provisions that brought the power industry into this thing. For me and this firm, it got a little dicey because of the fact that I represented the water users, and Dennis represented power users. So, as a consequence, I ended up having to do a lot of coordination with the folks working on the power side to make sure we weren't adversely affecting them, unintentionally, as we were moving through the process.

Ultimately, they [power] made some very foolish decisions in terms of the restoration fund language that has come back to haunt them. Both Dennis and I warned them against doing that. Luckily, we wrote letters and memos telling them not to do what they ultimately did.

Chall: In the final bill.

Somach: In the final bill. And they didn't take our advice. And, they've complained about it since. Luckily, we had advised them against it. We could have gotten better language for them, but they went their own way. So, we went through and spent a lot of time, Tom and I did, on those provisions. The deal was this. We were going to negotiate by ourselves. Then, we were going to put this report out to our clients. Clients would have no influence upon changing this; it wouldn't change. Then, we would go back to Washington, D.C. and, together, brief the folks in D.C. on it.
And, we would, then, further negotiate, with clients and with everybody else, modifications in this language. So, our negotiations were supposed to be the first tier of broader discussions. That's all. Well, what came out of that was-. Actually, my clients were more receptive, initially, of that than, ultimately, they ended up being. They were very complimentary about the effort. It wasn't everybody, but a critical mass of the contractors were complimentary.

Chall: To say go ahead?

Somach: Yes, initially, on this thing. Dave Schuster came unglued. He thought it was horrible. He just thought it was just the worst thing. I remember, Dave said, "You're not serious about that."

Chall: The idea of sitting down with Tom Graff?

Somach: Well, just the result, he hated the result that came out of it. And, he told me, "You're not serious, right? You've got something in mind about that other than that." Boronkay hated it. He really hated it because it had money associated with transfers, remember? I remember a meeting in my office. I mean I was taking hits right and left. It was kind of funny because Tom and I together were defending these things.

Chall: Where were you working on your draft?

Somach: I was in my other office at De Cuir and Somach.

Chall: So, you worked in your own office?

Somach: This was a period of time when there was a lull in Washington. So, when we were putting this together, it was all out here in California. The notion was that there was a period of time before we took it back there. There was a time line set out for getting it done. Miller and Bradley said okay; they bought off on our doing this. I remember this meeting--.

Now, remember, when Boronkay and I cut the deal on the transfers, Graff was outraged. Well, now, Boronkay was outraged. He came into my office, I remember, he said, "I'm not drinking anything that you serve here because you might give me what you gave him--talking to Tom--to work your magic, and I'm not having any of that stuff." The initial review was that I had somehow taken advantage of Tom.

Chall: That's what the paper says. [laughter]
Somach: Oh, newspapers were out there talking about how I had taken advantage of Tom.

Chall: I guess it's [William] Kahrl.¹

Somach: Bill Kahrl, yes, wrote this thing about how I had eaten his [Tom's] shorts--that was the famous phrase. In a left-handed manner, Kahrl gives me all these compliments for being able to work magic anywhere I go. Bill Kahrl had been involved when I had resolved through litigation some problems on the lower American River in Sacramento County.

Of course, he was at the Sacramento Bee at the time and was very aware of what was happening here. I had also done some work the result of which he hadn't agreed with, and he had accused me of kind of seducing everybody from the environmentalists to the board of supervisors and everything to get my way. This was just another example. As complimentary as that was, and that was what was being reported, I didn't think that I had taken advantage of Tom. My intention was not to take advantage of anybody.

Chall: Did he?

Somach: I don't think Tom did. In fact, I've talked to him since then. It was unfortunate that the rhetoric got that way. It may have been an attempt to dissuade the environmentalists from going along. What happened, then, I'll never forget--this was the second time I quit--was that Schuster was very upset. Remember, he was still pushing the other kind of legislation. Legislation with only technical fixes. He, in a sense, had dropped out of the picture. I think that bothered Dave a little bit, that here he had dragged me into the process.

The reality of it was that the state contractors were not directly involved. People were not listening to them, and they should have been. I didn't have time to listen to him. And, he never understood the problems I was having with my clients on top of everything else. He was resentful of Kim because she was very involved, and she didn't talk to him very much about it. He had no one to turn to because Bob Will had been marginalized in the process. Then, we came up with this radical thing that I had cut a deal with Tom Graff, and he was very upset.

Chall: You were supposed to finish your report on the fifteenth [June] and go to Washington on the sixteenth and present it. Did you

show it to these other people--G-4 and others--on the night of the fifteenth so that they could critique it first?

Somach: Yes, and I may not be remembering the time line on all this. There was a period of time, even after the sixteenth, or whatever the day was, there was continual discussion out in California about this proposal. Remember, even though I had certain limitations, it was still my language, and I was defending it. So, some of these discussions came up in the process of legislation. I remember that Dave called me, and he got me when I was on a small vacation. My grandmother was old, as grandmothers are. I mean she was almost a hundred years old.

I visited her often; she lived in Chicago. I was on one of these trips in Chicago. I was visiting with her, and I remember Dave called me. My son was with me. My uncle was there. Dave was yelling at me on the telephone, just screaming. He said, "I am going to destroy you." That was basically it. "I am going to bury you. I am going to make sure you never work again." This is how acrimonious things had gotten. I listened, and listened, and listened to him, and I was thinking he was perfectly capable of destroying my career, I guess. I mean I wasn't thinking very much about it. I said, "Well, Dave, you've got to do what you've got to do, I guess. I'm going to stand by what I did. I think that it was a good thing, and I'm trying the hardest I can. I'm sorry that we've reached this disagreement."

I remember my son because it had a residual effect. My son is now nineteen. He was just a little boy back in '92; I mean he was much younger. And, he heard this conversation. He knew Dave and is still kind of upset with Dave about this. But, what I did after that was, I quit.

Chall: Well, now, you did quit. But, let me go back just a moment and find out how you felt on your way to Washington. You were called away. You were not permitted to go and do your briefing.

Somach: Oh, here's what happened there. So, I got back to Washington, and we had planned on having a conference call. You've never lived until you've been on a five- or ten-hour conference call.

Chall: I hear. [laughs]

Somach: You see, this experience has--. There are certain things I don't do anymore, and among them is I don't do long conference calls. I refuse. They can hire someone else to sit down on a telephone call with thirty-eight lawyers to go nit-pick. I don't do that kind of work anymore. I will either assign it to someone else, or I just won't take the work, and it comes from this. In some
sense, I'm professionally scarred. Not just in terms of people being mad at me, but me being mad at other people. There is some reciprocity about all this stuff.

What happened was we went back. Remember, I had, in the give and take with Graff and my negotiations, conceded some points to him that we both agreed—and he conceded some points to me—were subject to further negotiation. I never anticipated Somach-Graff to be the end of anything. It was merely the beginning of kind of a revived and renewed process of negotiation, a new basis upon which to negotiate.

A lot more work needed to be done on the draft. I had made concessions in there, particularly on the restoration fund that I did not want to agree to. But, I had gotten some really nifty things in return. That's why this notion that I had somehow out maneuvered Graff is absurd. Tom wanted certain things, and he got those things, out of that negotiation. I wanted certain things, and I got those out of the negotiations. Depending upon who you were, you believed that one side or the other did a better job. And, that's the deal.

Most people pooh-poohed the dollar side of this thing, so what Tom got out of it they didn't consider to be particularly significant. What I got out of it were the things that were the sexier issues, the issues that people were really focusing on. So, it looked like I had just won the whole negotiation, but things are never as simple as they appear. Tom did very well in his negotiations. I knew he was getting what he wanted, and it was too much.

I had to negotiate more with him, but there was a broader negotiating dynamic that had to be considered. I knew I was going to lose some of the things that I gained in that process, but there were other issues and other people that had to be dealt with, and I was very aware of that also. So, again, this was just a stage in the negotiations, and I felt fairly good that I was positioned well to go into the next stage of the negotiations.

Chall: But.

Somach: My clients told me to go back and negotiate. I had signed on to go back and begin the next stage. That's why I say it [Somach-Graff] was initially received pretty well by my folks.

Chall: Even though they called you away?

Somach: But, wait now, that was an interesting phone call. That phone call took place late one night when I finally got back there, and
we were in Kim's office. We were doing this conference telephone call. I was going forward. The whole nature of the phone call was how to go through the next day.

All of a sudden, Mark Borba gets on the telephone call and says he talked to the governor, and the governor doesn't want me to go--no explanation. He's going to take care of it. There were people that would take care of us in this process, period. So, there was a discussion, and the discussion revolved around the fact that the governor has directly told us. And, we believed that he had said that. We believed that the representation was an accurate representation. Although, Borba was one of the people that had lobbyists working back there that were sending some other message.

Chall:  Is Borba a member of the Westlands Water District?

Somach:  He's a landowner down there. I don't really know. He was not a client.

Chall:  Oh, he was a landowner in Westlands, is that it?

Somach:  Yes, I think. I mean I believe. I mean Borba is not my client. He has never been my client.

Chall:  The governor had never been involved before.

Somach:  Well, he had been involved. We knew that he was following what was going on. But, remember, he had been involved in the context of don't pass any legislation, and he and Seymour disagreed a little bit about how to go through the process.

Chall:  Okay, so, now, the governor has told you.

Somach:  My clients, basically, said how do we possibly just thumb our noses in the face of the governor of the state of California. There was some discussion; don't go. Then, there was basically, ultimately a direction. I don't remember if the direction took place that night or early the next morning because there was still some mumbling and grumbling. Don't go.

So, I went to Cal Dooley's office. Kim and I conveyed the information to him. Then, I made some phone calls. I called Senator Seymour and told him, and I called Vic. I spent some time on the phone with Vic, and I remember that really well. Then, I remember Cal very well, and how disappointed and upset he was about this. I remember sitting on the couch. What I remember about it the most is how all my energy drained out of me as the time that we were supposed to meet came and went.
I was, at this point, just waiting for my plane to go back to. I had just come the day before, and I was all geared up to brief the legislative people about Somach-Graff, and now I was not going to be able to do this. I knew not proceeding with the briefing was wrong. Now, I had this draft [Somach-Graff]. I knew it was going to have a life of its own, and I wasn't going to be able to fix it. You know, I had never intended to just leave it as first drafted. It needed more work. I kept telling people that, and they understood that. I remember as I sat there I'd get more and more tired until I could hardly stand when I had to get up. That's how exhausted I was. I remember getting on the plane and going back.

Then, we had further discussions out in California, generally, because the thing didn't die obviously just because I didn't participate in the briefing. But, what you had was a one-sided representation. Some people liked it. I think Jensen liked it. I think Beard was less impressed by it, as I recall, but there were elements that he thought were okay. Then, there were these discussions in California, and I didn't back away from it like I think people wanted me to. Then, it ultimately culminated in this conversation with Dave Schuster where I was going to quit. I said, "Bob [Will], I'm out of this. I'm not backing away--"

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Chall: I recall at some point during our conversation that you said either that you wanted to talk about Somach-Graff or that you didn't want to talk about it, in terms of its substance. I wasn't sure what you said.

Somach: Yes, I can. But, I, quite honestly--.

Chall: We have the bill [H.R. 429]. This oral history is being done for research. It seems to me that what we want to get is the dynamics, the story.

Somach: Let's do this. Let's finish up the story. Then, what I'd like to do is go back and review some of the important points. The funny thing about my files is that a lot of the bills I drafted at one point in time or another are in here. That's the scary part of all this. I have the originals that came out of the word processing machine--sitting here. It's amazing how much of it came out of this office.

It surprised me when I went back through it all because I have handwritten drafts of provisions that I didn't even recall writing. One of the funny things has been in implementation. You talk about intent, I clearly didn't have the intent, as I wrote
things that have been imputed to me regarding some of the stuff. Since I'm not a congressman, my intent is irrelevant. It's interesting to see some of that.

But, what I'd like to do is, in fact, go through two things. The Somach-Graff as well as the final bill, talk a little bit about those provisions and how they got there, at least, from my memory of the history.

Chall: That's good so we can talk about how that final bill was put together. What we've done now, we've gone through the Somach-Graff negotiations. The draft is dead in the water. But, somebody did use it.

Somach: Well, it actually never died. Yes, it's out there.

Chall: It got used.

Somach: As I said, at this point in time, Schuster was very upset with me, and I quit again. But, I'm telling you, I wanted to be out of this in the worst possible way. Now, it's a mess, on top of everything else. It's a mess. And, it's not going well at all. Schuster just gave me an excuse to quit. The end result was that I communicated that to Jason and to some others on the CVP and said the only way I could think of to avoid this problem, since it has become a personality issue here, is to take the personality out of the deal. This is a much more important thing than me, so I'm going to take myself out of the process. That leaves you really free to do what you want to do with all of this stuff, period.

Well, the end result was that, again, nobody wanted me to quit. In fact, Schuster almost got fired as a net result because the CVP contractors got so outraged about the fact that he was meddling in what they thought was their business. They called the people that he was working for.

It was kind of a funny juxtaposition, and Dave has actually been amused about the fact that somehow I had out maneuvered him and done exactly to him what he thought he was doing to me when, in fact, I didn't do anything. I didn't do anything; I just said, "Well, I know one solution to this problem and that is I'll take myself out of the equation and that should equalize things again."

After that, however, it became very difficult to work. Because, from my clients' perspective, what happened after that was that the notion that there was some other solution to the problem, that there was some savior at the end of this process that would preclude harm happening to them became more pervasive...
for some reason. I mean the governor's involvement and everything.

Chall: Oh, I see.

Somach: Also, at about this time, you had a stepped-up effort by people that had hired individual lobbyists and individual lawyers to become involved in the process. I was still working closely with Senator Seymour along with the members of the House. In fact, I remember during that period in time that Cal called me and told me "You can't quit because if you quit, I'll quit." I remember he suggested opening up a bait shop down in Mexico. That was what we were going to do. He kept telling me I couldn't quit because it would put him in an untenable position. He had worked so hard.

I have to tell you I came away from this with a new admiration of, certainly, some of the congressional folks that I worked with, from Seymour, to Vic, to Cal, to Rick Lehman. They were working really hard and being threatened on the other hand if they didn't do exactly what the contractors wanted by being not elected. In fact, Lehman wasn't re-elected, yet those contractors had no sensitivity toward the real dynamic back there. What was happening over a period of time was that George Miller and Bill Bradley were asserting more and more of the power that they had.

They had done a good job in terms of pulling this thing together. They had this massive piece of legislation where other senators were starting to get involved. It was about this time that Conrad Burns, Malcolm Wallop, even Bob Dole started getting more involved in the process. That was a very interesting dynamic. Things started to rush at that period of time. Things were working at a much more aggressive pace.

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Steps Toward Drafting the Final CVPIA Bill

Chall: This was conference committee time.

Somach: Yes, and the environmentalists were much more involved. I was perceiving what Miller-Bradley were doing and it was more than anything that was happening on our side. And, part of the reason was because there had been a shift of the power dynamic, at least on the Senate side, away from Senator Seymour and toward these other Republicans who had a broader base of interests. Remember, the conference was on the bigger bill [H.R. 429], not on the
CVPIA.1 So, on the House side, in particular, our involvement was very small because we were just a little piece of the legislation.

Chall: You're only Title 34.

Somach: That's right. So, that was part of the dynamic. It was just strange. I remember that whole period of time as rushing by very quickly and trying to find a place. Kim and I were working feverishly wherever we could to do what we could. But, because our clients had basically, by this time, bought into the notion that there was a savior out there for them, not engaging very well, we were becoming quickly disenfranchised.

Chall: During this period of time, I guess, it was thought that you had been working behind the scenes with Mike McGill. Some time in September a Fazio draft surfaced that allocated 800,000 acre-feet to fish and wildlife and $30 million a year to the restoration fund.

Somach: Eight hundred thousand acre-feet of yield.

Chall: Of yield, yes.

Somach: We now have litigation over this. That was what I was talking about, this additional work.

Chall: I guess the bill had gone anywhere from one million to 1.5 million acre-feet of yield.

Somach: You know, these were like the last official jobs. We're toward the end. A lot of what had been in Somach-Graff was in this bill. No longer do we have this monolith that I could call the CVPWA. We've got a CVPWA, but people working independently now to affect the legislation. There is the notion of a savior out there, and we've got some fundamental problems in this legislation. And, yes, I got along with Mike McGill who became, after this, Senator Feinstein's chief of staff.

My major work, at that period of time, was actually with Congressman Fazio. I assisted in coming up with some of the ideas that were in the so-called Fazio letter that he sent to George Miller as a mechanism for trying to resolve some of these problems.

Chall: I don't think I've seen that. Maybe, you could get a copy?

Somach: I have it here. We worked very hard with what was then on the table to try to come up with mechanisms. This dedication of water which I think I referred to much earlier in the day, this notion that fish need water. The idea there was how much water? Originally, they had 1.5 million acre-feet, which was to be measured as out flow under the Golden Gate. You had to actually measure 1.5 million acre-feet going out regardless of what it was being used for. It was just an arbitrary number. It was a large number in terms of the total amount of water under contract for the CVP.

The restoration stuff that had been, the dollar and cents language that had been drafted in the bill was terrible language. The concept was fine, but it didn't operate well. It didn't take into cognizance how Congress appropriates monies. Vic Fazio has always been on the Appropriations Committee, and that's his bailiwick. His guy, Roger Gwinn, who was also very active toward the end of this and very helpful, sat down, and we were trying to figure out ways to make the legislation, from a financial perspective, work the way it was intended to work.

Fazio has always played this interesting role. I mean he was the number three person, or still is the number three in the House of Representatives, so he has a leadership position. He has always been the type of guy that would pull disparate interests together trying to find common ground. So, the letter and the issues that are dealt with in the letter, basically, stem from that.

I didn't write the letter, but Roger consulted me about the letter, and we talked about the concepts. By that time, Dave and I were talking again, as I recall, and we came up with the whole yield concept that is in 3046(b)(2) now of the CVPIA. We wrote that. That's stuff that I've got here that we wrote. It's a very complicated way of going about things. It was a way we thought that you could dedicate water but dedicate it in such a manner as to reduce the potential impact upon CVP contractors. They were going to be adversely affected. That was absolutely clear.

Chall: Is that the one that's under contention now?

Somach: That's the one under contention now. Remember, we talked about the G-4. We all talked about that. No one wanted any of this stuff in there. The notion was, "God, this was happening. This is a better way of going about it than any other way." So we had discussions about how it would work, how it would operate. We talked to Roger about it. Roger, reportedly talked to David
Yardas about it. I read Dave and Tom's oral history. I disagree with interpretations, but upon hindsight, I never had any direct conversations with them. They were all through Roger, so I have no idea whether there was a meeting of the minds anywhere through that process on that issue.

There were other issues. Since then, I know Vic has been very upset with Dan Beard about when he became commissioner [Bureau of Reclamation], allegedly reneging on deals that were agreed to in language that was written about renewal and settlement contracts. Over time, you know, a lot of that stuff comes out. At this period of time--we were very far down--we were trying to make a bad bill as good as we could. The general consensus of the contractors was, "Don't spend much time on the legislation."

Chall: I see.

Somach: But, I was still working. I wasn't working behind the scenes. In fact, I would indicate that I never worked behind the scenes in the way that it has been supposed. I always was in contact with either Jason or someone else at the CVP. The G-4 became a very easy thing for me to work with there, in terms of checking back and forth. They were created to watch me, and I used it as a safeguard in that manner.

What did happen at the end was I got pulled into some meetings where doors got locked, with various senators, other than Senator Seymour, where I was presented with draft legislation, then told, basically, "This is what we're going with, and you have an opportunity to go through this and help us with it." I would say, "I'm not a free agent here. I can't just sit down and help with legislation." I remember being lectured by one senator, a very important senator, that, "Sometimes you've got to be willing to get black and blue even if it makes your clients upset in order to properly represent them." In other words, the notion was, "These guys don't know what they're doing. They're about to be run over. You're the only one that can help them and save them. You've got to do it even if they've told you not to do it."

Of course, I said, "Look, I'm about as black and blue, in that regard, as anybody could ever be. I'll do what I can do, but I'm only going to go so far." I did have conversations with staffers about language and all that kind of stuff. Ultimately, I got thrown into a room with "The Draft" and told I couldn't call anybody, told I couldn't do anything. Senator Seymour hadn't seen the whole thing, and I was to edit, and they would go make the changes that I made.
I sat there with that bill for the longest time, maybe an hour, and I so wanted to go through there and fix it. I finally said, "I can't do this. I cannot do this. I have been told not to do this, and I cannot do this." I had it, the CVPIA. I could have fixed a lot of the bad stuff in there, and they [Miller, Bradley, and others] would have fought for those things that I wanted done. It was a more moderate approach. I mean we were going to get hurt, but we would have been hurt differently and less harmfully I think. But, I ultimately said, "I can't do it because my clients told me not to do it." They said they understood, and I walked out the door, and the door locked behind me. I mean I was out--. I literally was out in a hallway. I can't remember what office building I was in. I went up to Senator Seymour's office, explained the whole thing to him. I remember how furious he was. He made calls to the various senators that were involved, and they were acrimonious phone calls, but he couldn't move them. It was because of the broader dynamic that we talked about earlier, this hostage-taking notion.

The Omnibus Water Bill Passes the House and Senate

Somach: As I said, things went very quickly after that. Then, we were on the floor of the House and the Senate. I watched it all from Kim's office. It was on C-Span. It was broadcast from beginning to end. I have the tapes here. I've seen them since. I remember the hostage-taking part of this most from John Rhodes' statement. John Rhodes needed legislation on the CAP [Central Arizona Project] for syphon repair.

Chall: Syphon repair?

Somach: The aqueduct goes under some rivers, and those syphons were defective when they were put in. It was like $34 or $40 million to fix them. He needed the authorization to fix them because they were in jeopardy of blowing out, in which case the Phoenix and all these other central Arizona agencies were going to be penalized.

Chall: So, they had to have that bill.

Somach: They had to have it. You can go back and listen to this. It's just the most amazing thing to watch when he does this because he is eloquent. The election was coming up. He was in the middle of a very contentious election, which he was defeated in. This was in October that this was happening, or September, and the election was in November. And, I remember, he was almost in tears. And,
he just decried the position he was in, and how he was a hostage, and it was despicable, and it was not good.

And, the reason I remember it a little bit is because John and I have become good friends since then because I've worked very closely with him on the Central Arizona Project. I've told him that I remembered that. For some reason, I remembered that really well, at the time. I remembered it at the time, and it probably stuck in my mind more than anything I remember about the debate. Although, I remember Lehman being in charge of the floor debate for the opposition to the bill. That's why I remember Lehman being very actively involved with it. I remember airplane flights back and forth when he and I talked about it.

I remember Kim and I watched the vote. And, the vote was obviously just horrendously in favor of the bill, in terms of our perspective. I remember, at some point in time, getting on an airplane and flying home, and, basically, I was done.

One of the things I haven't mentioned that I probably should mention is a kind of a summation of this part of it. Then, I'll go through these files, and we can really fill in a lot of specifics in substance. I did get a lot of phone calls when I was in Washington during the period in time that they were doing this. These phone calls would come at me at three o'clock in the morning. They'd be drafting--. This is toward the end, right before these hearings. It was that week before. And, the staffers were working around the clock.

I would get a phone call at two, three o'clock in the morning. I was sound asleep. It would be someone calling me saying, "I know you can't work on this for your clients, but if you were working on this for your clients, would you draft this this way or that way?" Quite honestly, I would say, "If I was working for my clients, I would draft it this way as opposed to that way." I did a lot of that. I cannot remember all, quite literally, because these were two or three o'clock in the morning phone calls that came out of the blue.

Chall: Can you say who was calling you?

Somach: Just various house and senate staff members. Of course, we know, at the end, there was no savior out there.

Chall: No, there wasn't. I wanted to ask you about Senator Seymour's bill, S. 3365, which he put in at the very end.
Somach: It was a bill that had to die. It was passed by the Senate. It had to die because of the fact that the House was adjourned, actually, I think, by that time already.

Chall: I think Golb said he had drafted it with others in conferences. It was a give away?

Somach: Yes, I mean because it was a way of having him save face and not filibuster.

Chall: Yes, stop the filibustering. But, it does have some things in it that seem to be a little bit different from the original.

Somach: Let me look at it. I haven't seen it for a long time.

Chall: I only have a piece of it.

Somach: Well, I have it in here. Let's get to it maybe in sequence.

Chall: Golb told me that he and some other people wrote that, but I can't believe that some of these changes would have been acceptable to the contractors.

Somach: Oh, it was a desperate dying effort.

The Outlook for the CVPIA

Somach: Now, what I can do is step you through some of what we've talked about in a more chronological order, filling in some substance if you'd like to do that.

Chall: Yes, I would.

Somach: I'll do the best I can. I better be careful, though, about the order I pull my files out because I realize I've just pulled out the wrong ones. [Looking through files] Afterward, there was finger pointing all over among the contractors as to how this occurred. "How come we've got the CVPIA?" You know, what I understood to be the case when I went into it was that some people would blame me. In fact, some people still blame me for the whole thing. So, I don't represent the CVPWA as a whole anymore. In fact, what I represent is mainly the northern California part of the system.

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1Golb interview, pp. 54-56.
That's Golb's area?

Well, yes, that's right. He represents Northern California Water Association. I am general counsel for the Glenn-Colusa Irrigation District [GCID], which is the largest irrigation district in northern California. It's kind of an interesting district in its own right because it has the most senior water rights on the Sacramento River. We've had some interesting challenges and problems. They are a settlement contractor. Right now, the vice chairman of the GCID board of directors happens to be president of the Central Valley Project Water Association, so we are involved.

Who is that?

Sandy Denn, D-e-n-n.

D-e-n-n?

Yes. I represent them, so oftentimes, I'm pitted against folks in the southern part of the system when it comes to those types of issues. It did preclude my going forward because these people were just very upset. You know, people look for people to blame. Everybody's perception is different. I see that from reading the various [oral] histories, that perceptions are a little bit different. A lot of people's perception was, somehow, this was all my fault. As I said, I knew that was going to be the outcome if we didn't entirely win.

It's a revolutionary change, I think CVPIA is. That's the reason I'm doing this oral history series.

Oh, it was a revolution, whether it was a good one or a bad one is an interesting question to debate. I think the revolution was a good revolution, whether or not the CVPIA is the proper way to proceed is very debatable. My argument at the very end to Congress was, "You've done it. You're going to do it to us. I see that but do it right as long as you're going to do it." I don't think they did it right.

Is there any way to revise it? It's not going to be revised in Congress I assume.

Oh, there's no way it's going to be revised in Congress.

So, now will it be the courts, or will it be through regulations, lawyers, or will it be CALFED subsuming it?
Somach: You know, my own view is that we'll limp along with it for a very long time. I think the net result is it won't be fixed. We'll just limp along with it until circumstances change sufficiently one way or another to do another more or less broad overhaul of what needs to be addressed. I don't see anything--. You see, what happens, classically, with the CVPIA happened when there was a change in Congress—you know, when the Republicans took control of the Congress. All of a sudden, one of the big ticket items was let's modify the CVPIA.

I proposed a modification that would address the problem. Well, others saw that as an opportunity to go in and get back what they lost, fundamentally and substantively. That was never going to happen. Because you have the same people that talked about the savior saying, "Now, we can really gut the bill, and change it entirely." So, now you've got nothing. There will be no fine tuning.

Chall: So, it isn't going to go anywhere?

Studying the Somach Files: Analyzing Somach-Graff and the CVPIA

Somach: You can see that this is a little more extensive than that other. [Another cart full of files is wheeled into the room.]

Chall: Wow, it's two shelves full.

Somach: It starts back, for example, in September of 1990, unless there's something earlier. No, because it moves here. In most of this, what you'll find, as I go through, and I'll go through it very quickly, are drafts and re-drafts that never went anywhere but among the contractors or among Schuster and me earlier on. There was a lot of that. I mean it starts with the original bill, I guess, which was the California Fish and Wildlife Protection Act of 1990, which was the original Miller bill and Bosco bill. So, it starts back then. My files start back there.

Chall: Do you have numbers for that?

Somach: Yes. For example, I have H.R. 3613.¹

Chall: Right, I've got that. That's the Bosco bill.

¹Graff-Yardas interview, pp. 23-23a.
Somach: That appears to be the first one with a label on it. I don't think this one has one, but let me look really quick.

Chall: Well, hang onto those. Somebody is going to go through there and write a major Ph.D. thesis.

Somach: I, actually, at one point, was going to write a long article, but it was just too much, and I have to work here. Yes, 3613 is the first thing we start with. Then, I have a bill which is H.R. 5436 (Miller). This one appears to deal with Indian affairs. It must be in here because it must have dealt a little bit with the Trinity issue. I would bet.

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Chall: I do appreciate the time you're giving me.

Somach: Actually, I have got to be done by 2:30 because I have got to go home.

Chall: Both of us have to go home.

Somach: There was a preliminary to this stuff, it appears to me, dealing with South Delta legislation, trying to fix problems in the South Delta. I remember that was a significant issue. I've got that in here. I want to get through this because I'll get caught up in some of the nuances of this if I spend too much time. Yes, H.R. 4700.

Chall: Right, that's a Miller bill, California Fish and Wildlife Protection Act.

Somach: I remember I told you, Jason was working on that at the time. This is, undoubtedly, the letter I wrote to Jason that I'm looking at now. It says you can't do this.

Chall: Oh, you're telling Jason to tell Miller you can't do this?

Somach: Yes.

Chall: This isn't acceptable?

Somach: Yes. It's a pretty unrealistic view of the world, but I knew it was at the time. Again, at that point in time, we had some ability to control some of this, but it had that tone through it of you just can't do this. That's the bill.

Chall: Did Miller pay attention?
Somach: No.

Chall: But, the bill didn't go anywhere anyway.

Somach: Well, for other reasons, that didn't have anything to do with my comments. Well, maybe, they did actually; I shouldn't say that. Then, I have, I think this must be, a first draft of a subsequent Miller bill, 101st Congress, second session. And, I see the correspondence. This is all having to do with that original effort before the real effort on the CVPIA started. This was before I really got involved. This was when I was still kibitzing, and giving good advice to everybody, and saying what you can't do and what you can do. Here's where we get into it.

[Sorting through files]

Miller-Bradley legislation. I've got the files in here. I want to get to where I actually started working. Miller-Bradley material that they put out, and then internal stuff. What I'm looking at here now is, I think, testimony I gave. Now, this is testimony that Jason gave back in March of 1991 on what was called S. 484.

Chall: Yes, that's the first Bradley bill.

Background of the "Techno-Fixes" and Up Front Water

Somach: Okay, I guess I had edited the testimony. So, that's where we start getting into the real process. Then, I have our drafts, and they go on for pages. I don't want to get into those, but that's where the original--the core of the CVPIA, 3406(b)(2) and beyond, all those numbered provisions; they emanate first from these drafts. These were the original Schuster-Somach drafts that I described earlier this morning.

Chall: That section was in some of this then?

Somach: It carries over. It, actually, never was lost. It was never a rejection. It was a question of whether or not that went far enough.

Chall: Of course, it would always have different numbers.

Somach: They would change all the way through.
Chall: So, actually, it was part of your original draft, what turned out to be 3406(b)(2)?

Somach: Well, that all changed too, but the fundamental, the techno fix stuff, that's all in there, and that is where it comes from.

Chall: Actually, it was in Somach-Graff too. I noticed when I went through the draft that the language was almost the same.

Somach: Actually, you know, what I had forgotten was that in our original drafts, though, the significant difference was we did not want the CVP, the Department of the Interior, operating this project. What we talked about was establishing--. I had forgotten all about this. It's good that I looked at it. One of the key differences in that early legislation was that we established a Commission on Central Valley Fish and Wildlife Habitat Restoration. So, basically, the concept was you get a committee, and they would jointly operate the state and federal projects. That was how we envisioned it. In fact, that's what a lot of the early discussions focused on was, "Let's not have the Department of Interior; they'll screw it up. Let's get people who are going to do nothing else but focus on the operation of these projects, to do these types of things."

Chall: You wanted managers.

Somach: That's right. All the original drafts that we did had that as part of it. What ultimately happened was that was jettisoned for a number of reasons revolving around the constitutionality of doing it, but what remained out of all those early efforts that we had in our drafting were the fixes. So, that was basically where we started.

Early on, when I started getting more and more involved, I appeared before some of these subcommittees and gave testimony on the ideas that we had, the way it should be approached, which were: take a look at these physical fixes, stay away from the commitment of water, stay away from the re-authorization of the Central Valley Project. Those are not good things. Those are bad things. You'll do things there that you don't want to do. Let's do these technical fixes. Let's see what the impact of re-operating the CVP based upon these technical fixes are. At that point in time, we can dedicate water, if necessary, to do it, but we think we can do a lot with just these physical fixes.

The physical fixes came from a report done by the California Department of Fish and Game. They went through the whole process and determined that if these things were done, there would be significant improvement within the system. So, we didn't even
make the physical fixes up on our own. What we did was go through and adopt and adjust those things.

Chall: But, you always felt that there was no need for so-called up front water, is that what they called it?

Somach: I had forgotten that. Yes, that's what they called it. Our position was you don't need up front water.

Chall: That it could be handled by the fixes?

Somach: We didn't know that it could be handled entirely by the fixes, but if you had to start somewhere--. I remember saying that just throwing water at the problem wasn't a solution; it's too simplistic. It was in response to this, "Don't you know that fish need water; therefore, there has to be up front water." I would say, "That's too simplistic. Yes, I understand they need water, but they have water. It's not like they don't have water. The question is whether the water is sufficient, and it's hard to tell given the way we're operating the system.

"If we do these physical fixes within the system, things like the temperature control device, screening diversions, fixing a passage through the Delta, you may discover that you don't need water, or if you need water it's infinitely less than the kind of up front water that you say you need."

The question I used to ask them was, "Is your intention to really help fish and wildlife or is it just to punish agriculture?" The notion of providing up front water blindly without any scientific authority for how much it's needed is unrealistic. I mean they had no--.

Chall: Well, they claimed that they had a figure that somebody had given them from various sources and standards over the years.¹

Somach: Well, they had a figure. There was, in our view, no scientifically justifiable figure. I assume this is a point of contention and debate. It was then, and it probably is now. I still maintain they don't know how much water they need. In fact, I'll guarantee they don't know how much water they would need because we had that debate with them during this time. This was when we were trying to engage the environmentalists, and we got

the types of memos--I've got them in here--that will explain how they arrived at how much water they needed.

It didn't add up. Nothing they did added up in our opinion. Moreover, it didn't contemplate any of the physical modifications in the system we thought needed to be made. Yes, we were clearly trying to avoid the re-allocation of water from the existing use to the other use. That was no secret because every drop of water that was being moved was a drop of water we were not going to get; we would be harmed because it was being used. It was going to be taken away from us, and it was going to hurt. We understood that, and we thought that before you started hurting us--real people who were going to have problems doing what they needed to do--that you should be certain you knew how much water to take.

Chall: I noticed that, in S. 2016, there was a little statement regarding what I would consider meant fallowing land in order to get some water. So, you had apparently given that some thought.

Somach: Yes. In some respects, if you don't fallow land, you've got to find where you're going to get the water from. In some areas, assuming you had groundwater, the whole reason the CVP was authorized was to get people to not go to groundwater, so you were perpetuating the old subsidence, and groundwater mining, and over draft problems in certain systems.

Other people were just going to be driven out of business. That was the reality if you don't get enough water. The land was worthless without water. And, you kept getting into the policy discussions with the other side that said, "Well, that's good. That's not a bad thing from our side." We weren't going to concur on that type of view.

Then, I have in the files the notion that the governor's moving in this other direction. It wasn't too dissimilar from the commission thing; it was kind of setting up a parallel way of addressing these issues that would address these problems. I don't want to spend all year looking through these things. I'll tell you, every time I look through this stuff, there's a whole chunk of my life in these files, and I will tend to want to get deep into them.

Chall: Well, do tell me what you see in there that brings up recollections; we have some time.
Comparing the Somach-Graff Draft with the CVPIA

Somach: You know what I'm almost thinking would be productive is why don't I just go first to the Somach-Graff legislation, then go to the final legislation. Then, everything else I have is kind of interesting but anecdotal to that. I'm not sure we're going to have enough time right now to do it. I'm thinking, maybe, what I should do is go through the files, tab the things I think are interesting, and if you don't mind, maybe, we could get together for a short follow up. Maybe, I could even xerox off these things. I have to be a little careful because there are some clients' stuff, but some of the things are shareable.

Chall: Yes, I'd like some of that, anything that can be useful to the history.

Somach: You can tell there's a lot of it. Give me a year, or kind of a time for the Somach-Graff.

Chall: Somach-Graff was June 15, 1992.

Somach: That's actually down here.

Chall: There was a paragraph in the report that amused me. "Some who have become aware of our efforts over the last week have raised serious questions regarding the state of the mental health of one or both of us to have embarked on this effort." [laughter] That sounds like a Tom Graff statement. Did you write that? "The fact is: in a macabre sort of way, we have enjoyed the exercise. We both look forward, not necessarily with the same degree of positive anticipation, to the reaction of others to what we have produced."  

Somach: I remember that. We wrote that together. I remember that actually. I remember when we sat down and constructed that.

Chall: Mr. Boronkay seems to think that you wrote the report in somebody's cabin out in the country. Is that where you were?

Somach: No, we did it in my office. I may have gone over to EDF [Environmental Defense Fund] once during that period of time, but I remember most of it. It was when I was with De Cuir & Somach, so we were across the river in our other offices. We did it in the back conference room, which had kind of a neat view of the river. I'm trying to find any copy of Somach-Graff here.

1Somach-Graff Report to Interested Persons, June 15, 1993, p. 3.
Chall: Oh, here, is this it? I don't know where I got my copy.

Somach: Let me just see if I can find my copy. You know, I can find prior drafts. Oh, here it is, June 15. This is the draft.¹

Chall: It says interested persons from Somach and Tom Graff, Central Valley Project Reform Act.

Somach: See, you know, it's really funny. This is the example of why I tell you I've written a lot of this stuff. I've got a lot of that in my files. It's all in the law where I just simply re-drafted. Let's take a look at the Somach-Graff draft if I have it. I have the letter here.

Chall: The draft starts on page four. Amendment in the Nature of a Substitute, H.R. 5099.

Somach: Actually, I didn't have that attached to this. That's the trouble with files.

Chall: Section 1, A Short Title. Section 2, Purposes.

Somach: Yes, I can't remember exactly, to be honest with you right now, what we started with as a base, but I think we had something out there. The idea was to take that 5099 and just go through it in a way that made some sense to us. Most of the stuff up front didn't need much of a redo. Much of the definitions, that is, came, actually, from some of those early drafts that Dave Schuster and I did in any event. This is where we took on the refuge water supplies that are found in there, those cross references to those things.

Then, what we did was go through. The first thing I was concerned about--. The sections that I was most concerned about were new contracts, for example, and how that was excluded. I was worried about making certain that we were clear as to how long it would be before new contracts could be entered into. So, I spent some time drafting the exceptions part of this thing, so they made some sense.

Then, we went into the question of renewal of the existing long-term contracts. I will tell you that there was less concern about no new contracts because everybody knew that there wasn't

¹Most of the following section of the interview is devoted to discussing specific portions of the Somach-Graff draft and comparing it to the final Title 34 (CVPIA) of the Omnibus Water Act. Page numbers refer to the Somach-Graff draft of June 15, 1992. (M.C.)
going to be many new contracts because we were out of water even without the CVP, but the renewal provision was much more important. So, we took a look at things like the time period here. Part of the stuff that didn't show up in the final version was this language on successive renewals. The idea here was we would have continual successive renewals. I think the final draft gives you one renewal guaranteed, and then the others are discretionary in some way shape or form. Although, this is actually an argument of interpretation.

Chall: Isn't that why Bill Kahrl said that once you gave them a contract, they would have the water forever?¹

Somach: Well, that was my intent, certainly. Now, the way of dealing with the environmental impact statement--that was drafted into this. This is something that I came up with. Remember, I told you earlier I was concerned about putting the cart before the horse. This was an attempt to try to deal with that.

Chall: What section are you looking at?

Somach: This is in the 6/15 draft, section 4b. Well, I'm not going to read through the whole thing, but the notion there was to deal with that. The C of this section 4, in the 6/15 draft, had to deal with Westlands. The reason for that was Westlands didn't have a contract per se. They were operating pursuant to a court judgment. So, the notion here was to make it clear that court judgment was included within the contracts that could be renewed for periods of time. That ended up being, I believe still, in the final version of the CVPIA, but it was truncated. It was very short; it was like a line that dealt with that.

Water transfers. As I recall, we did go about changing this a little bit from the Boronkay negotiated draft because this was Tom's concern, since we were, in a sense, starting from scratch, to make some modifications based upon what he thought was appropriate. Among the things that happened was, the dollar and cents additions, that was really where he thought things ought to be tagged onto.

Chall: The transfer allowing individuals to transfer water that, of course, is what Boronkay said he fought hard, major, major battles for.

Somach: It was the notion of user initiated transfers.

Chall: Rather than through the districts. He said he won that from you.

Somach: That was one of the concessions that we made.

Chall: So, that didn't change here.

Somach: It didn't change. Remember, I had in mind that I didn't want to re-negotiate entirely with Tom what we had done even though we were really starting from a different perspective and dealing with things differently than we had done in terms of what was there. I don't think we spent much time on a lot of the internal parts of this thing. The question of metering was, I remember, an important part of this.

Chall: Did that stay in?

Somach: That, actually, is one of those issues where--. Remember, I told you there were some phantom provisions. This section underwent some changes where more specific metering requirements were added, and then taken out. When they were taken out, other language was not modified to reflect the fact that things had been subtracted from that language.

Everything here was in pretty good shape in terms of references. It was subsequent. You know, when other modifications were made, things were added to these things. This Water Pricing Reform is an interesting provision [Sec. 5 (a) p. 12]. This was a concept that was important, but the notion that we developed here was that rather than using a stick to get incentive based pricing, we should use a carrot. The carrot here was that rather than your being penalized for using all of your contractional amount, you would be benefited by not using all of your contractional amount.

Chall: Is that part of the tier?

Somach: It's part of the tier. This is what we proposed for tiered pricing. But, when they did the final bill, they went to the more punitive nature where they penalized you for using water over a fixed percentage. This, I and Tom thought, was a better way of approaching things, to encourage people to conserve as opposed to penalizing them for not conserving. You can tell that on water conservation, just based on the parenthetical that we added here, about how we needed further discussion on that issue. We didn't totally resolve how we wanted to deal with all those issues [page 1].

Chall: Fish and wildlife restoration?
Somach: Yes. We negotiated hard on the re-authorization of the CVP, which is in Section 3406 [Title 34, p. 4717]. This is Section 6(a) of the Somach-Graff, or the Graff-Somach, negotiated draft. One of the things that I took out of this thing was... One of the issues was whether or not what was intended with respect to the reauthorization for fish and wildlife purposes was enhancement of fish and wildlife or mitigation. This draft reflects more of a mitigation effort.

Moreover, some of the earlier drafts had language that required us to comply with what the state board wanted to do. That became, actually, a bone of contention at the very end, and that is something I got active in at the very last of the CVPIA negotiations. The state was trying to add language. The State Water Resources Control Board was trying to add language that would require us to meet state board requirements in the context of some of these directives.

I kept arguing we would be subject to duplicative and inconsistent determinations. "You can't do that to us; you've got to go one way or the other." I said, "Why don't you just not refer to it in these authorizations and just provide that the existing law, which is the law that is spelled out in California versus the United States is the law." Ultimately, the state board folks were referred to me by all the people in the Senate and the House. They said, "We don't care about this issue. We're going to do whatever Somach says to do, so you work it out with him." The language in the final CVPIA reflects what I wanted done.

I was worried at that point. I kept telling them, "Look, this is not one of these issues where I'm fighting you on whether it should be done. It's just that you can't go both ways. You have to go one way or another, and you're going to build into this thing, this ambiguity. I know the state of California, and they're going to attempt to assert this. Who's going to suffer? It will be the contractors because we'll be pushed in two different directions. All that is going to do is mean more water taken from contractors when you two don't agree on what should be done."

Then, we got into the real meat of a lot of this—that's the Activities. You can see that it's a lot shorter than what ended up in that final bill I do believe. It had a lot to do with operation, and then a program [reading] that would ensure "by the year 2002, natural production of anadromous fish, and Central Valley rivers and streams will be sustained on a long-term basis at levels not less than twice the average...." [Section 6(b), p. 15] That was still to be agreed upon because I did not agree with that. I didn't agree with the time period, but there were issues
here along with the notion that these were all reasonable efforts as opposed to an absolute goal of doing that by that time.

Chall: Did that require any up front water?

Somach: No.

Chall: That was just a goal?

Somach: It was a goal. Then, you have some exceptions for Friant. You have exceptions for wildlife refuges, which are picked up later. Then, there is language that talks again about meeting goals. There's a mitigation element in this that what you're trying to do is address things that are caused by the project, as opposed to trying to fix every problem that there is out there, which could be caused by all kinds of things out there, including the State Water Project.

Chall: Right, I see.

Somach: Now, here's the water provision. It says, "Provided further, that to the extent that a dedication of water constitutes all or part of the implementation plan set forth in the program, the Secretary shall provide such water based upon reasonable variations to reflect precipitation in runoff year types. The program mandated...shall be deemed to meet the mitigation protection and restoration purposes of subsection 6(a); provided that the Secretary shall also make all reasonable efforts, in the development and implementation of the program, to address other identified adverse environmental impacts of the project not specifically enumerated herein." [Section 6(b)1, pp. 16-17.]

So, it wasn't a specific amount of water. It was supposed to be part of a program that contemplated all of those physical things that I've talked to you about before, so that once you got all that in place, then you would determine how much water was necessary, if any, as opposed to coming up with this amount in the beginning.

If you notice, basically in Facilities. "A description of physical facilities is contained in both the amendments to H.R. 5099 as well as H.R. 3876. We think they should "be reviewed, those which are counter-productive to section 6 goals be eliminated...." [Section 6(b)2, p. 17] Basically, they were the core of what's still in the CVPIA. Rather than writing it all, we just decided to put it in here.

Okay. There were some cost allocations suggested there. We looked at them and thought that they were appropriate, the way the
cost allocations should be. San Joaquin River Plan. This was all new. This is a way to deal with the San Joaquin River in a way that avoided the release of water. [Section 6(b)3, p. 17]

Chall: No wonder the environmentalists didn't like this bill.

Somach: Particularly, people like Hal Candee who wasn't even in the country when this was being drafted. It was a clear intent on my part to get rid of his litigation. I made no bones about it. It didn't work because there was language modified when the final CVPIA was drafted, but I sure tried. Wildlife Refuges. Basically, we didn't have much problem with what was there. Then, we had the notion of the advisory committees. [Section 6(b)5, p. 18]

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Chall: I think earlier Miller and Bradley bills included some kinds of advisory committees, but Tom Graff said they were removed because they entailed more bureaucracy.

Somach: Well, there was more bureaucracy, plus they did run into problems with how far they could go with them. Then, there's the whole Restoration Fund, which is brand new stuff. [Section 7, p. 20]

Chall: Why did Dave Schuster take umbrage with this? What did he feel?

Somach: I don't know. I don't think I ever understood why he was so opposed to it. I mean I was marginally interested at that time. I think it was because it was a variation from a theme that he had struck and what he was looking for. I don't really remember. Probably, if I went through the files, I would have some notes on what it was. At the time, I knew what it was because we, in addition to that, had some meetings, so he must have expressed his view.

I'm sure I took note of it. It has no currency with me now. As it ended up, I don't think that his concerns were anything that ended up affecting any of the legislation. They were concerns that were unique to whatever he was focusing on at that point in time.

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1NRDC litigation involved contract renewal issues for Friant contractors. Graff-Yardas interview, p. 87.

2Graff-Yardas interview, p. 81.
The access charges--. This is where MET came unglued on the $50 per resident charge. I mean think about how much money that was. I didn't care. That was Tom's idea, and it wasn't coming out of any of my clients' pockets, being just as opportunistic, I guess. This was the part that was giving the power people problems. [Section 7(b)3, pp. 21-22]

Then the FERC [Federal Energy Regulatory Commission] licensee charge, and the charge per kilowatt hour, which did not end up in the final bill, but which were way too high originally. [Section 7(b)4, p. 22] This was even too high, two mills, but it was even higher when Tom originally came up with it. We were able to reduce it just in our conversations to explain to him that it would be incredibly high and create bad rate shock in the power community. That's the discussion I described earlier.

Funding the Non-Federal Agencies. This is dollars that could flow to non-federal, mainly non-profit, or state of California agencies that needed money to implement part of what was going on here. The notion was that the feds didn't have a corner on doing it best. It still went with this notion that Interior didn't do everything, so that the money wasn't necessarily supposed to be the Department of Interior money. It went with the commission. It went with the concept of a much broader view of these issues. [Section 7c, p. 22]

Chall: Is that still in the bill? It seems to me that I read something that would allow, for example, some organization like the Nature Conservancy to get some of that water.

Somach: I don't remember. We'd have to go through the bill, and I'll be able to take a look at it. In fact, we're almost done. Well, I don't know if we're almost done. I remember all this stuff. I have trouble without looking more specifically at the files to figure out how much of this is carryover from prior drafts and how much of it is brand new, how much of it we modified.

Chall: Well, that's something the students, the researchers can do.

Somach: I mean I have it all. It's all here; that's the funniest thing.

Chall: Yes, as long as you keep your materials around because we just want to understand as much of it as we can.
Somach: Yes, everything that's in here, that's structured, we worked on. We did some modification, otherwise we would have done as we did with the major Facilities and just said we substantially adopt. [Section 6(2), p. 17] We did a lot of wordsmithing in that context. At this point, I'm not sure I can pull anything else out that is significant. But, I can remember. If you give me a copy of the CVPIA as it exists now, I can tell you that--. Let me give you some examples. I know we did more work on definitions over time to fine tune it.

Chall: When you say we--?

Somach: We, meaning that I was involved in fine tuning. I can't honestly tell who the we is. I can only tell you, at this point in time, the I.

Chall: You were working in Fazio's office?

Somach: Some was there. Some came out of the midnight calls, or after midnight calls, that I talked to you about. I know that we did some more work even on Section 3404 dealing with Limitations on Contracting and Contract Reform, in fact, we did a lot of work. For example, it says, "The prohibition on execution of new contracts under subsection (a) shall not apply to contracts executed pursuant to section 305 of Public Law 102-250, or section 206 of Public Law 101-514...."  

One of those, I can't remember now, was another client of mine that I had been able to obtain a contract for, and one of the things I realized was they hadn't entered into contract yet, and this would have prohibited that contract, so I wrote that in there to make sure my other client was covered. I insisted on its staying in there, and it stayed in there. Fazio was involved. It was within his district, and that's one of the reasons why it stayed in there, but it was something I insisted upon. In fact, we're in the process now of finalizing that contract.

We did, again, play around with renewal of the existing contracts and exactly what that process is like. Some of these provisions, however, are of less--. Over time, a lot of this, like the whole water transfer stuff, started from the effort that Carl and I worked on. Some of it was adopted from what Tom and I worked on, but others also had hands on it. I've already kind of talked about where some of the core stuff came from.

1Title 34, Section 3404(b), p. 4708.
Metering of water, we took out. For example--. I'll give you an example of this strange wording. It says, in essence, "The secretary 'shall provide that the contracting district or agency shall insure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary.'" [Title 34, Section 3405(b), p. 4713] Well, comparable to what? Originally, there was a sentence that had a volumetric measuring device as required, so they either had to be that, or they had to be similar to that.

It ended up that what was required was water conservation under the Reclamation Reform Act. So, it was conservation that was required not measuring devices comparable to anything. When you read that, it makes absolutely no sense to read it because originally it was to be volumetric measuring devices or something the secretary deemed to be comparable. The volumetric was taken out, and they never went back and fixed up the language. That stuff drives me crazy. I don't know.

Water pricing reform. This is the concept that we had. It went back and forth, but, again, it's more punitive in nature than anything that we had. This is where we did a lot of major work.

Chall: This being the Fish and Wildlife Restoration?

Somach: Yes. Most of this stuff is carried over. Again, mitigation is the hallmark here. Remember, I told about the state wanting some authority. It says here, "Nothing in this title shall affect the state's authority to condition water rights permits for the Central Valley Project." [Title 34, Section 3406(4)(e), p. 4714] That had been one that actually gave the state more authority. This goes back to the existing authority of the state.

I want to come back to something that I buried deep inside here, which has never been particularly used or been effective. I thought it would have been the savior. One of the things that happened was the whole coalition fell apart, so there was no ability to control much after that.

Interpreting the 800,000 Acre-Feet Concept: Annual Allocation or Yield

Somach: This whole part here that deals with the 800,000, [Title 34, Section 3406](b)(2), that is currently the subject of litigation--the concept that we drafted. It came out of the Fazio letter. It
was a mechanism to--when we knew, quote, up front water was going to be the rule, to avoid this notion of allocating a certain amount of water in every year regardless of whether it was needed, or what it was going to be used for, the idea was to work on yield and reduce yield by a certain amount, as opposed to allocating a set amount of water.

The environmentalists have argued differently. They've argued that it's 800,000 acre-feet of water annually. In some years, using yield, it means that actually more water is allocated to the fishery than 800,000. But, in certain years there can be less than 800,000 acre-feet of water. Because what you're dealing with is the equivalent of 800,000 acre-feet of yield of the CVP. When we get into dry periods, you get a reduction of that amount.

Chall: So, yield is the amount of water that's available?

Somach: Over the period.

Chall: I just want to get in my mind the difference between 800,000 up front, and 800,000 yield.

Somach: The language is very specific here. "For the purpose of this section, the term 'Central Valley Project yield' means the delivery capability of the Central Valley Project during the 1928 through '34 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to CVP...have been met." [Title 34, Section 3406(b)2, p. 4716] The concept is it's 800,000 acre-feet of yield based upon a yield study that uses the 1928 to '34 period, and that was a very specific thing.

We knew exactly what we were talking about, and we described this to everybody. It means that you don't get 800,000 acre-feet every year. What you do is you take a look at the yield impacts associated with allocation of water to various things. When you have a yield impact of 800,000 acre-feet, you stop. That's a different thing; that would take another five tapes. It would probably take a trial, with a lot of testimony, and a lot of examples, and expert testimony to explain. That was the concept that was in mind. In a sense, since contractors are allocated water based upon yield, it was a way of giving some equal dignity to the fish.

Chall: I see. So, that's the problem that's now in contention?

Somach: Yes.
Chall: Is this the particular problem with the CVPIA or CALFED?

Somach: Well, it's having an impact upon CALFED because it's one of the issues that was implicit in the deal. The federal contractors and the state contractors thought that what they were agreeing to was a commitment of 800,000 acre-feet of yield when they agreed to the base line discussions. The environmentalists claimed something else. The Fish and Wildlife Service and the Department of Interior actually claimed something entirely different than that. There are actually three positions that are being asserted.

I am told and have observed that it's having an adverse effect upon the whole CALFED process, which is based upon a certain amount of trust, and a certain amount of assumptions as opposed to what's in the CVPIA. It is having a significant--. I mean that's the way I've heard it talked about, particularly by the state contractors in support of the federal contractors, that we've got to resolve this because it's having an adverse impact upon our ability to move through and deal with what needs to be dealt with in CALFED.

Current Problems and Interpretations

Chall: So, this may shatter, once again, alliances?¹

Somach: It is one of the big problems. Again, it has created an alliance that is ag-urban versus environmental versus, in this case, the Department of Interior. There are actually two pieces of litigation. Contractors have brought one.

Chall: Which is it?

Somach: It's actually the San Luis-Delta Mendota folks that have brought one, and then the environmentalists have brought another. They're both suing the Department of Interior's interpretation. Those suits have been consolidated.

Looking through this further, the stuff on the Friant in the San Joaquin and Stanislaus River got carried over. Although, there was some wordsmithing done that I had nothing to do with that carried over from the Somach-Graff provisions, which may have affected some of my intent. That's been litigated.

¹See also Boronkay-Quinn interview, pp. 114-137 passim.
Now, it's up on appeal. The language of that, in particular, is whether or not this precludes the release of water until such time as this San Joaquin River Report/Plan is done, or whether or not the state could independently order a release under state law of water from Friant.

I want to go through some of this. The Restoration Fund, obviously, is basically the concept we had. It's just fixed; that's all that happened. A lot of that was due to the efforts of Congressman Fazio. It just works now. Some of the limitations you see were things that we were able to deal with so that I could limit how much harm we would be affected by. I wanted to put a limit on the power users too. They [the power users] didn't want to do that. They felt that they didn't need to do it. Now, they're complaining about some of the impact that they've got here.

Chall: So, you put a cap on it?

Somach: Yes, six dollars, and twelve dollars an acre-foot for ag and M and I [municipal and industrial] use respectively so that I could always know what the outside obligation would be. We did that on purpose. We talked about what the number should be with the CVP contractors when it looked like those were, in a sense, agreed upon numbers.

Chall: And, the electric people?

Somach: They wouldn't do it. They didn't want to do that, so there wasn't much we could do.

Chall: So, you just left something in there that was there? Is that right?

Somach: It was the language they suggested, which didn't have a limiter on it. It was whatever they drafted, which I told them was a mistake. As I said, they've come to agree that it's a mistake, but there's not much they can do.

We added these sections. Everything that is added about getting water back, like Project Yield Increase, that's what we added. [Title 34, Section 3408(j), p. 4730] The Environmental Review provision, this 3409, which is the Programmatic Environmental Policy Act, I just fought as hard as I could to get that out of there, and I couldn't. It was something Tom Jensen wanted in there, and he got it. I don't see that it helps anything. It has just created all this mischief.

Chall: Is there anything going on? Are they writing?
Somach: Well, they've got the massive document out there now. As I said, it's fuzzy. It's unclear. It is very threatening. And, it's out at the same time that there's a draft on the Bay/Delta plan, a draft on the CALFED plan, and it doesn't relate to anything essential that's going on. It's one more massive document of thousands and thousands of pages of technical documents, and it makes no sense because we ought to be working in the context of these other things that are going on, not having to independently go about and do this type of document.

These Compliances with State Law are things that I drafted. The first says, "Notwithstanding any other provision of this title the Secretary shall, prior to the reallocation of water [including the 800,000 acre-feet] from any purpose or place of use" or otherwise specified within our water rights, permits and license to something that isn't in our permits and license, you've got to go back to the state board and amend your licenses. [Title 34, Section 3411(a), p. 4731] They have never done that. Basically, they have appropriated water under state law for agricultural and M and I purposes. That's what most of the permits said, yet the USBR [United States Bureau of Reclamation] is re-allocating that for in stream and other purposes. Under state law, you can't do that. I wrote that section with the thought that we would make the USBR go through that state process, and maybe the state would have common sense enough to look at what was proposed and add a reasonable balance to the decisions on what should be done.

I told you we had been involved in the COA. We wanted to make sure that the secretary had to fully comply with the coordinated operations. This reference dates specifically back to that legislation. [Title 34, Section 3411(b), p. 4731] This is the notion that the obligation should be borne. One of the things that we did in that context: there was a duality in the COA legislation, so, in a sense, you couldn't do anything in here that would adversely affect the bureau's ability to meet its water quality requirement under the law. These were two provisions I thought to be fairly significant, yet they've actually come to nothing. It's partly because no one I currently represent is directly in the firing line of these things anymore, and various other people have chosen not to perceive it that way.

Chall: When you say they've come to nothing, it means nobody is implementing them?

Somach: Yes, they've never gone to those provisions and said that we need to go back to the state board and get your permits and licenses amended to do that which under state law I don't know that you can do. It's there. That was one of my late night ideas; when everything else was going down the tubes, I thought that would be
California Lawyer's Unemployment Relief Act of 1992. With its conflicting priorities, ambiguous language and ambitious environmental goals, the Act will surely create work for environmentalists and agricultural lawyers. However, the purpose of the Act seems sensible: to balance environmental interests against agriculture and industry. As California grows, its resources will not be sufficient to supply all wants to all people. Therefore, the time for managed conservation has arrived. Only the evolution of the Act through the regulatory and judicial process will tell whether its purpose can be fulfilled." Does that make sense to you?

Somach: Yes, I don't have any problems with that. Let me do this. I've got to look for the final on this, but it is something I can share with you because it's out there publicly.

Chall: I think your secretary wants you. [interruption]

Somach: I have got to leave here in ten minutes.

Chall: Well, I just want to thank you very, very much for the time you've given me and all this good information. Whatever you can find to add to the plot of the story, I'd appreciate having.

Somach: Okay.
a good thing to do. But, you know, I'm not in charge of the world here, so, as a consequence, we never got very far with it. If you're interested, though, I can go through these things. I can't do it right this minute, certainly.

Chall: Well, when you have time--. When you get your transcript to review, if you could pull out some of the material that would be useful, either for an appendix or that would, like all of this collected material, go into the Water Resources Archives library.

Somach: Yes, I will do that. I will do that. Yes, I'll have time. I actually have to go through this legislative history for something else I'm doing, and I could probably kill two birds with one stone.

Chall: Now, there was an interesting article written by Douglas Noll. Do you know who he is? It is in the San Joaquin Agricultural Law Review.¹

Somach: Oh, I remember that.

Chall: He took the CVPIA law practically item by item and has analyzed it, I think, quite thoroughly.

Somach: I did a step-by-step analysis in the CVPIA. I'm not certain that was done--.

Chall: Have you written it up somewhere?

Somach: Yes, it's written up. I can probably pull it out.

Chall: Oh, that would be good.

Somach: That is the gospel according to their CVPWA's perspective as to what the statutes mean. I wrote it up right after because, you know, at that point in time--.

Chall: It was fresh.

Somach: Well, not only fresh, but we were worried that the Department of Interior had absolutely no explanation. I found here an outline of the Somach-Graff article.

Chall: You might be interested in what he says in conclusion: "Some consider the Central Valley Project Improvement Act the Central

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contact with all of the people. They're in contact with our own clients telling them what we're telling them, yet this mystical someone out there is going to come out and save them, that we don't have to do this because there's another way to do it. Yet, there was no one there.

It was just the most absurd and ridiculous thing that I've ever seen. There was this separate communication: they are telling us we don't have to do this and we're moving in the wrong direction; and we're being provided bad representation by Somach and Schnoor and whomever, yet one could never identify who this was. I was in contact with every one of the representatives that were on our side working on this. Senator Seymour and I were talking routinely. When I wasn't talking to him, I was on the phone with [Richard] Golb and his aide. It just was one of those very strange situations where there was this mystical thing out there.

Now, Borba had close relations with the governor. I know he was talking with the governor, and I know he was talking to the governor, and that was an independent voice which we all needed to take very seriously. But, the governor's office was very weird when it came to the actual negotiations.

When we sat around the table with the Miller-Bradley
faith because we had conceded a lot of stuff in the RRA in return for giving up on certain things.

But, obviously, this is politics, and it's not equity, so as a consequence, whether something is fair or not--. I mean that was part of it so if you take a look at some of the issues they went toward contract renewals, whether or not contracts--. We spent a lot of time on that language of contract renewal as to exactly what it should look like; how many years, whether renewal contracts after that should be mandatory or discretionary that type of language. There was a question of when environmental review had to be done, before or after.

In looking at the Miller and Bradley draft, there were just legal problems upon legal problems. Even if they got what they wanted, it would horrible. In fact, today, that's part of the problem of the CVPIA. Later on, when this thing looked like it was headed toward where it was going,

At one point in time, I said, "For God's sake, at least go back and fix some of these problems. I mean you've got language that makes no sense. You've got phantom sentences that refer to sections that no longer exist in the draft. You've got ambiguities built upon ambiguities. It appears to me you're going to hurt my clients' interests, but for God's sake hurt them where
sexier issues, the issues that people were really focusing on. So, it looked like I had just won the whole negotiation, but things are never as simple as they appear. Tom did very well in his negotiations. I knew he was getting what he wanted, and it was too much.

I had to negotiate more with him, but there was a broader negotiating dynamic that had to be considered. I knew I was going to lose some of the things that I gained in that process, but there were other issues and other people that had to be dealt with, and I was very well aware of that also. So, again, this was just a stage in the negotiations, and I felt fairly good that I was positioned well to go into the next stage of the negotiations.

Chall: But.

Somach: My clients told me to go back, I had signed off to go back and begin the next stage. That's why I say it was initially received pretty well by my folks.

Chall: Even though they called you away?

Somach: But, wait now, that was an interesting phone call. That phone call took place late one night when I finally got back there, and we were in Kim's office. We were doing this conference telephone
thrown into a room with the draft and told I couldn't call anybody, told I couldn't do anything. Senator Seymour hadn't seen the whole thing, and I was to edit, and they would go make the changes that I made.

I sat there with that bill for the longest time, maybe an hour, and I so wanted to go through there and fix it. I finally said, "I can't do this. I cannot do this. I have been told not to do this, and I cannot do this." I had it, the CVPIA. I could have fixed a lot of the bad stuff in there, and they would have fought for those things that I wanted done. It was a more moderate. I mean we were going to get hurt, but we would have been hurt differently and less harmful I think. But, I ultimately said, "I can't do it." They said they understood, and I walked out the door, and the door locked behind me. I mean I was out--. I literally was out in a hallway. I can't remember what office building I was in. I went up to Senator Seymour's office, explained the whole thing to him. I remember how furious he was. He made calls to the various senators that were involved, and they were acrimonious phone calls, but he couldn't move them. It was because of the broader dynamic that we talked about earlier, this hostage-taking notion.

As I said, things went very quickly after that. Then, we were on the floor of the House and the Senate with these things.
May 21, 1999

Mrs. Malca Chall  
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Berkeley, CA 94720-6000  

Re: CVPIA

Dear Mrs. Chall:

Enclosed is the photo you requested. It is a bit old (circa 1992 — about the time of the CVPIA) but it is a general representation of what I currently look like.

I have now twice looked over the volumes of files that I collected during the CVPIA process. I am afraid, however, that most of what is of interest I really cannot provide you without CVPWA approval. The Attorney-Client privilege simply precludes me from going any further than I did in my verbal account of the process.

Finally, on the last page of the draft you posed a few additional questions. My “reflections” are as follows:

The business community was courted heavily by Senator Bradley. I believe that they were flattered by his attention. In general, I did not think that they were particularly well-informed about the issues and looked for simplistic solutions to complex problems. I do not think that their efforts were helpful in any meaningful way except to lend public credibility to the Bradley/Miller efforts.

Again, in general, while there was a lot of media attention to the CVPIA, at best, the attention resulted in knowledge and opinions based upon information that was a mile wide and an inch deep. Particular members of the media were better informed, but they tended to reflect a certain bias either all of their own (Bill Kahrl is an example) or based upon their normal lines of communication (New York Times/Tom Graff).

The water “alliance” has clearly been affected by the CVPIA debate. Miller/Bradley effectively exploited the differences among water users to obtain the
result that they sought. I am not certain that the result would not have occurred in any event. The CVPIA may have only accelerated the inevitable. As to whether they will ever again be united, the answer is: yes and no. They do unite and will unite to achieve mutually sought-after goals. They will never be united as they once were.

In commenting on all three of the above, I do not mean to be critical. Again, I thought Miller/Bradley identified these areas, individuals and entities and then effectively developed and implemented a strategy that ultimately accomplished their ends.

Finally, the water community has, indeed, been hurt by aspects of the CVPIA, although I would not go so far as to say that it has been hurt by all aspects of the CVPIA. However, my own view is that the real harm caused by the CVPIA was not what was intended by Miller/Bradley. Most of what I would call real harm, it appears to me, is caused by inartful and ambiguous drafting, the bizarre administration of the CVPIA by the federal agencies involved, and the interrelated and redundant bureaucratic requirements of the CVPIA, Clean Water Act, and Endangered Species Act in the context of the CALFED process. Moreover, the worst probably has not even been revealed yet. That should fully blossom when the Department of the Interior/United States Bureau of Reclamation unleashes its PEIS and then attempts to proceed through long-term contracting and related programs.

I hope the foregoing was helpful. Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,

Stuart L. Somach
Attorney

SLS:sb
Encl.
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Malca Chall

Graduated from Reed College in 1942 with a B.A. degree, and from the State University of Iowa in 1943 with an M.A. degree in Political Science.


Active in community affairs as a director and past president of the League of Women Voters of the Hayward Area specializing in state and local government; on county-wide committees in the field of mental health; on election campaign committees for school tax and bond measures, and candidates for school board and state legislature.

Employed in 1967 by the Regional Oral History Office interviewing in fields of agriculture and water resources. Project director, Suffragists Project, California Women Political Leaders Project, and Land-Use Planning Project, and the Kaiser Permanente Medical Care Program Project.