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East Bay Municipal Utility District Oral History Series

John B. Reilley

WATER RIGHTS AND LEGAL ISSUES AT THE  
EAST BAY MUNICIPAL UTILITY DISTRICT, 1951-1983

With Introductions by  
John W. McFarland  
and  
Frank E. Howard

Interview Conducted by  
Germaine LaBerge  
in 1995 and 1996

Since 1954 the Regional Oral History Office has been interviewing leading participants in or well-placed witnesses to major events in the development of Northern California, the West, and the Nation. Oral history is a method of collecting historical information through tape-recorded interviews between a narrator with firsthand knowledge of historically significant events and a well-informed interviewer, with the goal of preserving substantive additions to the historical record. The tape recording is transcribed, lightly edited for continuity and clarity, and reviewed by the interviewee. The corrected manuscript is indexed, bound with photographs and illustrative materials, and placed in The Bancroft Library at the University of California, Berkeley, and in other research collections for scholarly use. Because it is primary material, oral history is not intended to present the final, verified, or complete narrative of events. It is a spoken account, offered by the interviewee in response to questioning, and as such it is reflective, partisan, deeply involved, and irreplaceable.

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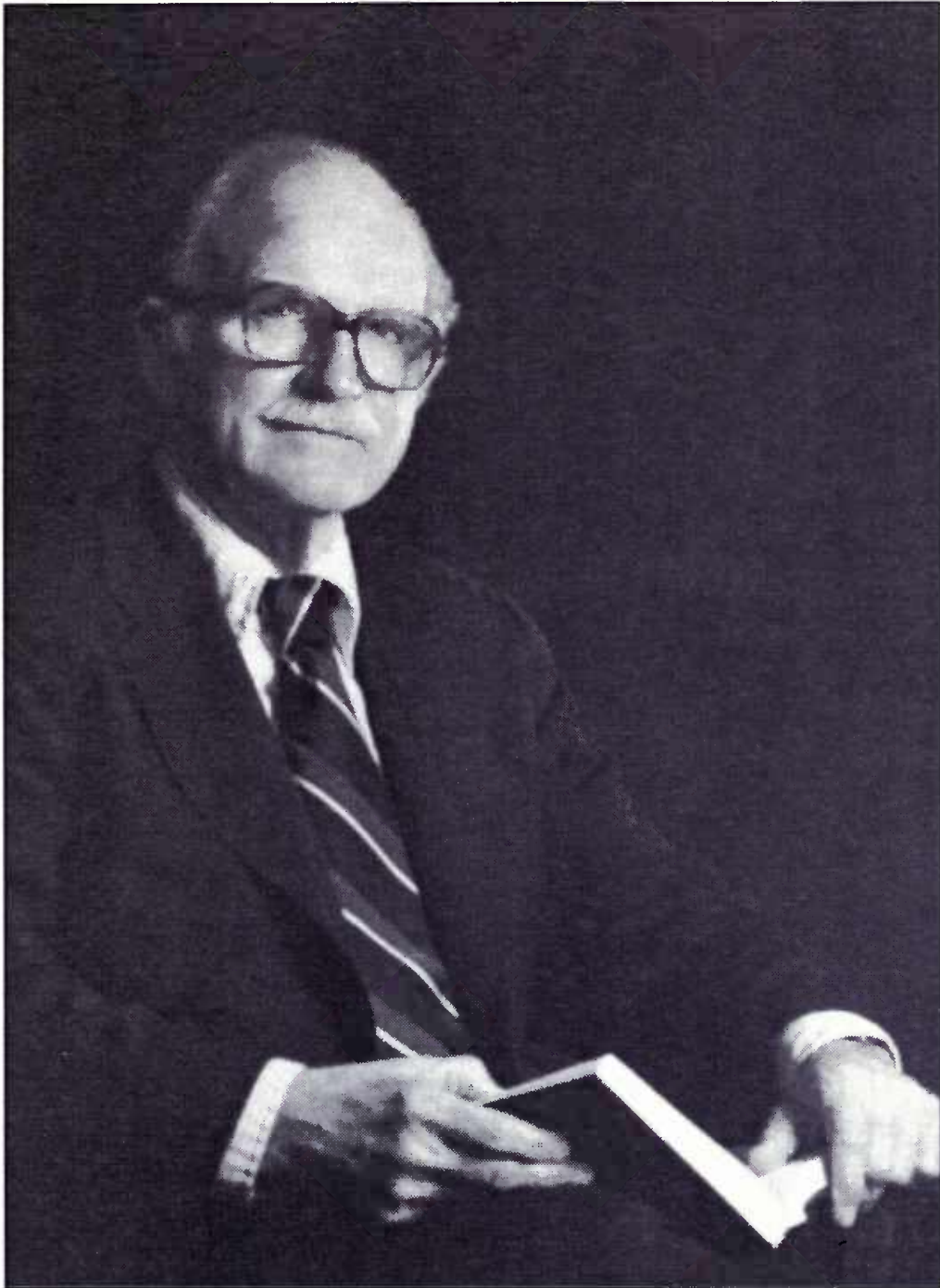
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John B. Reilley, 1980.

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EBMUD Attorney

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Introduction by John McFarland, General Manager (retired), East Bay Municipal Utility District, and Frank Howard, Attorney for EBMUD (retired).

Interviewed 1995-1996 by Germaine LaBerge for the East Bay Municipal District Oral History Series, Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

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Introduction--by John W. McFarland

Jack Reilley joined the legal staff of EBMUD in 1951, after serving from 1947 as Assistant Public Defender of Alameda County.

He originally worked on acquisition of rights-of-way for Camanche Reservoir and the Mokelumne aqueducts.

Jack Reilley was appointed EBMUD General Counsel May 1, 1966.

His outstanding contribution was heading up the acquisition of vital new water rights from the American River. This took a total of seventeen years, and involved court activity in the California and United States Supreme Courts as well as superior courts.

Jack Reilley retired in 1983.

The almost endless litigation finally ended in a favorable decision on January 2, 1990. Implementation of the American River water rights is now an important EBMUD program.

John W. McFarland  
General Manager (retired), EBMUD

Orinda, California  
July 1996



## Introduction--by Frank E. Howard

For more than seventy years the General Counsel of the East Bay Municipal Utility District has faced issues that have shaped the legal history of California. The role of EBMUD attorneys in securing and protecting water rights has added important chapters in the annals of Western water law. In addition to the accomplishments in water resource development and protection, the water district's attorneys have been involved in landmark decisions in many areas of public law, including eminent domain, taxation, land use planning, public contracts, and municipal financing. With the creation of the Special District and construction of wastewater treatment facilities, EBMUD lawyers began to face new legal issues in areas which subsequently became the environmental law development of the sixties.

The period from 1953 to 1973 brought major annexations to the EBMUD service area. This triggered needs for major facility expansions and a supplemental water supply. The "flip side" of these needs were new legal challenges as well as increased state and federal regulatory requirements. The seventies and eighties brought new legal issues in public employment, municipal financing, and environmental control and challenge.

In 1995, the district asked The Bancroft Library of the University of California, Berkeley, to conduct an oral history series of the General Counsel's Office. The Regional Oral History Office proposed to interview leading lawyers for the district to record and preserve their memories. The primary sources available for the project, Harold Raines, John B. Reilley, and Robert Maddow, enjoyed careers which spanned almost the entire seventy-year history of EBMUD. They were three of only four attorneys who led the legal department since its formation in 1923. By recording the personal recollections and anecdotal observations of those directly involved in the major legal and legislative contests of the district, the written records will be amplified and strengthened to the benefit of future managements, historians, and the public in general.

Frank E. Howard  
Attorney at Law

Walnut Creek, California  
April 11, 1997



## Interview History--John B. Reilley

The Regional Oral History Office has long been interested in California water issues. In 1991, the East Bay Municipal Utility District (EBMUD) asked ROHO to interview Walter McLean, a civil engineer who specialized in water resources engineering. So we were delighted when Frank Howard, representing a group of retired EBMUD attorneys, engineers, and managers, approached our office suggesting a project to document the history of water rights litigation and legislation from the standpoint of EBMUD. The idea was to begin with interviews of Harold Raines, John B. Reilley, and Robert Maddow, all former general counsel of the district. The EBMUD Board of Directors accepted a proposal drafted by Frank Howard of the Friends of Western Water Law and with the board's funding, we began to document the work of EBMUD's general counsel's office.

I first met Harold Raines and Jack Reilley in August 1995 for a preliminary conversation about their background and the goals of the oral histories. Harold Raines had hired Jack Reilley to be the East Bay MUD's litigator in 1951, and it was obvious the two attorneys have high and warm regard for each other and the district they served. Mr. Reilley, a graduate of St. Mary's College (1938) and of UC Berkeley's Boalt Hall School of Law (1941), was enthusiastic about the project.

Five interviews were recorded on December 19, 1995, January 22, January 30, February 28, and March 27, 1996, in Mr. Reilley's Rossmoor home. His son Jim was in and out between classes at law school, as was the companionable Siamese cat who liked to play with the recording equipment. His tan corduroys and golf sweater suggested his other great interest--golf. The atmosphere was relaxed for the tape-recorded conversation, based on an outline developed jointly. For background material, I consulted various sources at the Water Resources Center Archives at O'Brien Hall on the Berkeley campus; spoke with former colleagues; visited the EBMUD Records Office at the Oakland headquarters.

The nine tapes were transcribed in the Regional Oral History Office, lightly edited, and sent to Mr. Reilley for his approval. He made very few changes and returned the transcript promptly. The interviews were corrected and indexed at our office.

Many thanks to Frank Howard who gave impetus to this project and to the East Bay Municipal Utility District for financial support. For introductions to this volume thanks go to John McFarland, retired general manager of the East Bay Municipal Utility District (1950-1968) and Frank Howard, retired member of EBMUD's legal department.

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, and is an administrative division of The Bancroft Library of the University of California, Berkeley.

Germaine LaBerge  
Interviewer/Editor

April, 1997  
Regional Oral History Office  
The Bancroft Library

April 1997

## CALIFORNIA WATER RESOURCES

The following Regional Oral History Office interviews have been completed by the Regional Oral History Office, a division of The Bancroft Library. The Office was established to tape record interviews with persons who have contributed significantly to the development of the West. Transcripts of the interviews, typed, indexed, and bound, may be purchased at cost for deposit in research libraries.

Single Interview Volumes

- Adams, Frank (1875-1967) Irrigation engineer, economist  
Irrigation, Reclamation and Water Administration. 1959, 491 pp.
- Banks, Harvey (b. 1910) Director, Department of Water Resources  
California Water Project, 1955-1961. 1967 82 pp.
- Beard, Daniel P. (b. 1943) Staff Director, House Committee on Nat. Res.  
Passage of the Central Valley Project Improvement Act, 1990-1992: The Role of George Miller, 1996, 67 pp.
- Downey, Stephen W. (1876-1958) Attorney  
California Water and Power Attorney. 1957, 316 pp.
- Durbow, William (1886-1958) Manager, irrigation district  
Irrigation District Leader. 1958, 213 pp.
- Gianelli, William R. (b. 1919) Director, Department of Water Resources  
The California State Department of Water Resources, 1967-1973.  
1985, 86 pp.
- Golb, Richard K. (b. 1962) Senator Seymour staff  
Passage of the Central Valley Project Improvement Act, 1991-1992: The Role of John Seymour, 1997, 136 pp.
- Graff, Thomas J. (b. 1944) Environmental Defense Fund attorney  
Yardas, David (b. 1956) Water resources analyst  
The Passage of the Central Valley Project Improvement Act, 1991-1992: Environmental Defense Fund Perspective. 1996, 133 pp.
- Harding, Sidney T. (1883-1969) Professor of Irrigation, UC Berkeley  
A Life in Western Water Development. 1967, 524 pp.



- Hedgpeth, Joel (b. 1911) Marine biologist  
Marine Biologist and Environmentalist: Pycnogonids, Progress, and Preserving Bays, Salmon, and other Living Things. 1996, 319 pp.
- Jones, Herbert (1880-1970) California State Senator  
California Government and Public Issues. 1958, 318 pp.
- Lambert, Charles F. (1887-1959) Land promoter, irrigation district official  
Sacramento Valley Irrigation and Land. 1957, 83 pp.
- Leedom, Sam R. (1896-1971) Newspaperman, water project administrator  
California Water Development, 1930-1955. 1967, 83 pp.
- Leopold, Luna B. (b. 1915) Hydrologist, educator  
Hydrology, Geomorphology, and Environmental Policy: U.S. Geological Survey, 1950-1072, and UC Berkeley, 1972-1987. 1993, 309 pp.
- Mason, J. Rupert (1886-1959) Municipal bond broker  
J. Rupert Mason on Single Tax, Irrigation Districts, and Municipal bankruptcy. 1985, 372 pp.
- McLean, Walter R. (b. 1903) Water resources engineer  
From Pardee to Buckhorn: Water Resources Engineering and Water Policy in the East Bay Municipal Utility District, 1927-1991. 1993, 330 pp.
- Nelson, Barry (b. 1959) Save the Bay director  
The Passage of the Central Valley Project Improvement Act, 1991-1992: Executive Director, Save San Francisco Bay Association. 1994, 88 pp.
- Peltier, Jason (b. 1955) Manager, Central Valley Project Water Association  
The Passage of the Central Valley Project Improvement Act, 1991-1992: Manager, Central Valley Project Water Association. 1994, 84 pp.
- Raines, Harold (b. 1901) EBMUD attorney  
Water Rights on the Mokelumne River and Legal Issues at the East Bay Municipal Utility District, 1927-1966. 1997, 108 pp.
- Reilley, John B. (b. 1916) EBMUD attorney  
Water Rights and Legal Issues at the East Bay Municipal Utility District, 1951-1983. 1997, 130 pp.
- Robie, Ronald B. (b. 1937) Director, Department of Water Resources  
The California State Department of Water Resources, 1975-1983. 1989, 97 pp.
- Taylor, Paul S. (1895-1984) Professor of Economics, specialist in reclamation  
California Social Scientist. (Three volumes)  
 Volume I: Education, Field Research, and Family. 1973, 342 pp.  
 Volumes II and III: California Water and Agricultural Labor. 1975, 519 pp.



Multiple Interview Volumes

California Water Issues, 1950-1966. 1981, 458 pp.

(Goodwin Knight/Edmund G. Brown, Sr. Project). Interviews with:  
Edmund G. Brown, Sr., "The California Water Project: Personal Interest  
and Involvement in the Legislation, Public Support, and Construction,  
1950-1966."

B. Abbott Goldberg, "Water Policy Issues in the Courts, 1950-1966."

Ralph M. Brody, "Devising Legislation and Building Public Support for  
the California Water Project, 1950-1960; Brief History of the Westlands  
Water District."

William E. Warne, "Administration of the Department of Water Resources,  
1961-1966."

Paul R. Bonderson, "Executive Officer, Regional and State Water  
Pollution and Water Quality Control Boards," 1950-1966."

Save San Francisco Bay Association, 1961-1986. 1987, 220 pp.

Interviews with:

Barry Bunshoft, Esther Gulick, Catherine Kerr, Sylvia McLaughlin.

The San Francisco Bay Conservation and Development Commission, 1964-1973.

Interviews with Joseph E. Bodovitz, Melvin Lane, and E. Clement Shute.  
1986, 98 pp.

Interview in Process: Robert Maddow, for the East Bay Municipal Utility  
District Series (water rights and legal issues).

For other California water-related interviews see Land-Use Planning and  
Sanitary Engineering lists.



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Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name JOHN BRADY REILLEY

Date of birth 8/16/16 Birthplace OAKLAND, CA

Father's full name JOHN M. REILLEY

Occupation SERVICEMAN Birthplace OAKLAND, CA

Mother's full name MARY ALICE REILLEY

Occupation HOUSEWIFE Birthplace SAN FRANCISCO, CA

Your spouse JANET MAY REILLEY (RUGGLES)

Occupation PUBLIC HEALTH EDUCATOR Birthplace LACROSSE, WIS.

Your children JOHN J. REILLEY, MARGARET SHULL, JANET HEWITT,  
JAMES A. REILLEY

Where did you grow up? OAKLAND, CA.

Present community WALNUT CREEK, CA

Education OAKLAND PUBLIC SCHOOLS; ST. MARY'S COLLEGE HIGH  
SCHOOL; ST MARY'S COLLEGE (B.A.), U. OF CALIF BERKELEY (J.D.)

Occupation(s) LAWYER

Areas of expertise WATER LAW, EMINENT DOMAIN, MUN. LAW.  
ARBITRATOR (SECURITIES).

Other interests or activities GOLF, SWIMMING, READING

Organizations in which you are active LEONIS CLUB OF OAKLAND (PAST  
PRES.); SERRA CLUB OF OAKLAND (PAST PRES.)



## I BACKGROUND AND EDUCATION

[Interview 1: December 19, 1995]##<sup>1</sup>

### Parents and Grandparents

LaBerge: We usually like to start with the beginning of when and where you were born and your family background, so why don't you tell me that.

Reilley: Yes, I was born in Oakland, California, on August 16, 1916. My dad's name was John H. Reilley. He was also a native of California, of Oakland. His father was a native of San Francisco. So, we've been residents of the Bay Area for quite a number of years. My mother was born in San Francisco and she came to Oakland after the earthquake and fire in San Francisco.

LaBerge: What was her name?

Reilley: Her name was Mary Alice Brady. That's my middle name, Brady.

LaBerge: Oh, a good Irish family [laughter].

Reilley: Yes it was; 100 percent. Her mother and dad were from Ireland. They came to San Francisco in the early days.

LaBerge: During the potato famine?

Reilley: Well, I'm not sure just the date they got here, but they were here quite early, of course, much before the earthquake and fire in San Francisco [1906]. My grandfather Brady came across by train. The story goes that they got separated in Nebraska. My

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<sup>1</sup>This symbol (##) indicates that a tape or a segment of a tape has begun or ended. A guide to the tapes follows the transcript.

grandmother came on by herself with a little baby and then her husband later caught up with her. He, like a lot of Irish immigrants, worked on the docks, and ultimately, opened a saloon and grocery, started to acquire property, and became quite successful. Unfortunately, he died at a fairly early age.

LaBerge: Did you get to know your grandparents?

Reilley: I knew my dad's father. He was a chief criminal deputy sheriff in Alameda County.

LaBerge: I wonder if that had any influence on you in what you decided to do.

Reilley: Probably did, because I lived with my mother and father and my grandfather when I was six years old for about a year. My dad was ill.

LaBerge: What was this grandfather's name?

Reilley: He was also John H. Reilley.

LaBerge: Do you have brothers and sisters?

Reilley: I do not. I'm an only child.

#### Elementary Schools in Oakland and St. Mary's High School

LaBerge: Well, you grew up in Oakland. Did you go to Oakland schools?

Reilley: Yes, I did. I went to Jefferson Grammar School, Alexander Hamilton Junior High School, and then I went to Saint Mary's High School in Albany.

LaBerge: At the same place it is now?

Reilley: Yes, it is.

LaBerge: It was an all boys' school?

Reilley: Then it was.

LaBerge: Only this year has it become co-educational.

Reilley: Right. It became co-educational this year. Yes, I was born and raised in East Oakland and lived there, well, I lived there practically all my life.

LaBerge: Any memorable experiences growing up that you think affected you, like, for instance, your grandfather being a sheriff, or early memories.

Reilley: Well, not really. I had a normal growing up of boys. I played football in high school.

LaBerge: Did Saint Mary's have a good football team then, too?

Reilley: They had an excellent football team. They only lost one game in the last year.

LaBerge: Any particular teacher in high school?

Reilley: Oh, yeah. Then, almost all the teachers were Christian Brothers in high school. Being an all boys' school the discipline was a little bit different than now. If you got too smart they would rap your ears for you. But, I had a lot of good friends in high school. It was a very happy experience for me.

LaBerge: Did you always know that you were going to go on to college?

Reilley: Yes, I did. Actually, I knew I was going to be a lawyer when I was in junior high school.

LaBerge: Oh really. Now tell me about that.

Reilley: I don't really know why I did that, but I remember meeting with the counselors--they had a counselor even then, in those days, in junior high school--and I remember saying that I wanted to be a lawyer. I think maybe it had to do with my grandfather because I'd go down and visit him at the courthouse. So, I think maybe that was it.

LaBerge: Were there particular subjects you liked in school?

Reilley: Yes. I must say I'm not really much a science fan and I didn't have very much interest in mathematics, but I liked literature and reading. Being an only child, I spent a lot of time reading, so that I have been quite a reader all my life.



Father Employed by EBMUD

LaBerge: Your father worked for the district [East Bay Municipal Utility District], is that right?

Reilley: Yes, he did. My dad worked for the original water company, the People's Water Company and the East Bay Water Company, which were private companies, and then he became a part of the district.

LaBerge: What did he do there?

Reilley: My dad was, what they called then, a chief serviceman, which is kind of misleading because it gives you the impression that he did something physical--like connecting services and things, but that was not what the job entailed. He was kind of a representative that would go if people wanted to complain about their water supply, or their meter wasn't functioning properly, or they had a leak, also to collect delinquent bills and things of that kind. And he was in charge of that when he retired.

LaBerge: So, he did more personnel-type work then.

Reilley: Well, he was in the field, but it was not physically connected with connecting up services--except that he would go and collect closing bills, and maybe somebody wanted their water turned on, or something of that kind.

LaBerge: Did you ever think that you would also work with the district someday?

Reilley: Never, never. It's amazing but I had never given it a single thought.

LaBerge: That's interesting.

Reilley: No, I had no thought whatever of doing that.

Alameda County Public Defender's Office

LaBerge: How did your father feel when you joined the district?

Reilley: I don't think he was particularly happy about it. I think he thought that I could do better [laughter]. It's an interesting side line about how I was hired, too. When I got out of the navy--I was in for four and a half years--I had a brief fling at



a private practice in Berkeley with another attorney. Then I took an examination for the public defender's office in Oakland. I passed that. At first they thought there wasn't really going to be an opening because they had somebody who was already there, who took the exam, and he was going to get the job, quite honestly. But it turned out there was an opening, and so Willard Shea, who was the public defender, offered me a job. I took it because I really thought I would enjoy trial work. I worked there, I guess, for about four years, and Willard Shea retired.

So, they gave an examination for the job as public defender, which I passed with 100 percent--they had an outside panel--plus 5 percent for being a veteran. So I had a 105 percent, but I didn't get the job, because old Cliff Wickson, who was on the [Alameda County] board of supervisors, was retiring from the board and when he left he wanted to fix up his son, little Cliffie Wickson. The man who was in the district attorney's office, George Nye, who came in--there were only two of us that took the exam--he had indicated to old Cliff and his son that he would create a position of investigator for the public defender's office, which it needed. In any case, old Cliff Wickson--I found out later by talking to other members of the board--indicated that, by God, he was going to have that job for his son before he left, which he did because he bullied the other members of the board of supervisors in appointing George Nye as public defender. Briefly thereafter, George created the position of investigator and appointed Cliffie Wickson.

Well, the members of the employees' association raised such a fuss that they were not appointing off the civil service list that they decided to set up an exam. At that time I was still a member of the staff at the public defender's office and I had an office right next to George Nye's office. The partitions weren't very soundproof and I could hear Cliff Wickson and George in there cooking up what the questions were going to be on the civil service examination that they were going to give for the position. So I knew pretty well who was going to get the job, which is the way it worked out. Needless to say, I was looking around to go someplace else.

LaBerge: I take it George Nye did not do so well on the exam.

Reilley: Well, needless to say, he came in second when there were the two of us. George is dead now. And I don't want to be unkind to George because he was all right. Maybe I wasn't smart enough to figure out how to get the job.

In any case, I was looking around for another job. By that time I was married and I had a family; I had a little child. I needed to get some place to work, I had just bought a house and--

Applying for Work at EBMUD

LaBerge: You still had a job, it's just that it wasn't ideal?

Reilley: Well, it was intolerable. Nye wasn't particularly delighted to have me around either, which was normal. So, I went out to [University of California at] Berkeley, to the law school--in those days law jobs weren't all that plentiful, really. They had a list of some places. I remember one of them was East Bay because at that time there was just [Harold] Raines, and he had one other associate there who passed away.

LaBerge: I remember he said that.

Reilley: Yes, John Deal was his name. He wife, Betty Barry Deal, is a retired associate justice of the court of appeal, a very charming person. So, John had passed away unexpectedly. They were looking for some help, and they wanted somebody who had some trial experience because I think they were ready to embark on this expansion program.

LaBerge: You saw the ad when you went over to Boalt [Hall School of Law]?

Reilley: Yes, over there they had, I've forgotten, some kind of a list or something. I had graduated from Boalt before, just in '41, just at the outbreak of World War II. They said, what about the East Bay? So I said, well, I'll go down and find out what it's doing down there. I remember, John McFarland and Louis Breuner took me to lunch over at the Athenian Nile Club, which was kind of a nice place with a view of downtown Oakland.

LaBerge: It's no longer there, is it?

Reilley: No, it isn't. It's been taken over by, I've forgotten who it is, but the Athenian Nile Club, as such, doesn't exist anymore. I remember sitting down, having lunch with those two and Louis was always quite direct at his questions. He asked me a lot of questions about my background and so on. Then he came to the point, he said, "You know, your dad works for the district, and you're going to be on the side of management now, and can you handle that?" He really ticked me off, because I told him, I

said, "Look, if I'm half the man my father is," I said, "you'll get a hell of an employee!" He never said another damn word.

LaBerge: [laughter]

Reilley: The next thing I knew, they looked me up, they said they wanted me to go to work. Fine. I never figured to stay there longer than about three years because it's just long enough to look around for something else, to tell you the truth. The problem was, too, that I had just gone to work for the district. Lloyd Burke--who also went to Saint Mary's, and who I knew quite well through the D.A.'s office because he was a deputy D.A., became the U.S. attorney in San Francisco--because the Republicans came in, because [Dwight D.] Eisenhower got elected. Lloyd called me up and said, Why don't you come over to the U.S. attorney's office and take charge of the criminal end of the thing? I thought, Oh, hell, I've given my word to these people that I'm going to work for them. So, I thought I had to turn him down. I really was wishing that I was able, but I didn't feel like that after telling them that I would go to work for them that I could turn them down. So I gave up on that.

LaBerge: So that was a road not taken.

Reilley: Yeah, right. Lloyd later became a federal judge over there. He's dead now.

LaBerge: When you went for your interview, did you also interview with Hal Raines?

Reilley: Oh yeah, sure, yeah! I talked to Hal. Hal, of course, would never ask me a question like that.

### St. Mary's College, 1934-1938

LaBerge: No! Let's back up to just when you went to college because we didn't talk about that. You went on to Saint Mary's College. Had you thought about going any place else, or were you kind of encouraged to go there after Saint Mary's High?

Reilley: No, I wanted to go to Saint Mary's High School and to Saint Mary's College because my uncle by marriage had graduated from Saint Mary's College. My dad's sister's husband, Frank Nugent, graduated from Saint Mary's and he was trying to encourage me to go to the college. I had visited the old brick pile where the college used to be down on Broadway.

LaBerge: Oh, I didn't realize that!

Reilley: Yes. You know where all those used car lots are down below Providence Hospital?

LaBerge: Yes.

Reilley: Well, that's where the old brick pile was. They started out in San Francisco, over on Mission Road and they came over to Oakland, had the college down there on Broadway, and then they moved to Moraga.

LaBerge: But when you went there it was on Broadway.

Reilley: No, I didn't. A few years it had been out in Moraga. But, when my uncle used to encourage me to go, he used to take me down there to some of the events at the college. I never really thought of going any place else.

LaBerge: He must have had quite an influence on you.

Reilley: Frank Nugent was quite an interesting man. He was an athlete, he played baseball, he was a baseball pitcher. He was also quite a student of literature. He was quite a reader. He was a very well-spoken man.

LaBerge: Tell me something about your college experience.

Reilley: Well, I eventually became the vice-president of the student body and wrote columns in the school paper. Some of these kinds of things.

LaBerge: Did you play sports there also?

Reilley: No, I didn't because they outgrew me.

LaBerge: [laughter]

Reilley: They became too big and tough.

LaBerge: What was your major?

Reilley: I was an English literature major and a minor in philosophy.

LaBerge: I know you met Joe Alioto there.

Reilley: Joe was ahead of me. He was quite a figure in college. He was president of the student body. I don't know whether--he and Bill Simon, the fellow that they just named the hall after at Boalt,



Simon Hall? Well, Bill Simon was there. They were classmates, Alioto and Simon. They were quite, against--

LaBerge: Competitors?

Reilley: Competitors! In fact they ran for the student body against each other, and Alioto won because Alioto was quite a glib, colorful guy, where Bill was more of a quiet type person. Of course, there were a number of Aliotos there. There was an Alioto in our class. He was also a Joe Alioto. We'd call him Jo-Jo Alioto.

LaBerge: Any memorable teachers from college?

Reilley: Well, yes, Brother Leo, of course, was the star of the campus. Brother Leo was quite a dramatic type person. Recitations, he used to hold recitations down at the Oakland Auditorium and in San Francisco. He would recite poetry and bits of literature-- quite a Shakespearean scholar. He was kind of the literary star of the campus. And Professor Hagarty was a philosopher. He was kind of the resident philosophy professor.

LaBerge: Did you apply for law school straight out of college?

Reilley: Yes, I did. I applied at Boalt, and that's the only school I applied at, actually.

LaBerge: Did you live on campus at Saint Mary's?

Reilley: No, I didn't. I was a day student. I used to go out on the Sacramento Northern. They used to have a train that left 40th and Shafter, and would go directly out to college, and go on the siding there, and then in the afternoon they would come back into town. Then it would go on over to San Francisco. At that time, trains used to run on the San Francisco Bay Bridge, you know.

LaBerge: That's right.

Reilley: The Sacramento Northern--the San Francisco kids would get on the train over there, and then they would pick us up at 40th and Shafter, and bring us out, too. In fact, the conductor of the train was a classmate of ours. While the train laid over, he went to school, and then he would take the train back in. Then he went out to Cal and took some postgraduate work and became a member of the staff at the public utilities commission.

LaBerge: What was his name?

Reilley: Lyn Hull.

Boalt Hall School of Law, 1938-1941

LaBerge: Oh, isn't that interesting! Well then, when you went to Boalt, did you live at home too?

Reilley: I did. Yes, I did.

LaBerge: You spent three years there?

Reilley: Yes.

LaBerge: Had you taken any water law classes?

Reilley: No. I had no interest in, or even thought about that a lot. In fact, see, I graduated from college in 1938, and one year later the war broke out in Europe. It was very hard for you to think in terms of what you were going to do immediately after law school, because most of us were going to go into the service anyway. But I actually did quite well at law school, as a matter of fact. I was Order of the Coif, which is the top 10 percent of law school students in the country. I was associate editor of the California Law Review.

LaBerge: Do you have any articles published?

Reilley: I have one published in there, but I didn't do as much on there as I really intended to do.

LaBerge: What professors from law school stand out?

Reilley: Well, we had some pretty notable people. We had McBain, who was of course the evidence professor.

LaBerge: Is this Turner McBain?

Reilley: He's his father [James Patterson McBain]. I guess everybody in our class would tell you that the real character was Kidd, Captain [Alexander] Kidd. He's, of course, well known to everybody who went there. He was, of course, a criminal law teacher. He was great in the beginning, when your first year class was new and he would just absolutely erupt. You'd ask some question and you'd get this answer which--

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LaBerge: So, Captain Kidd would give an answer.

Reilley: He would just absolutely, just go into paroxysms of exasperation! It was all part, I'm sure, of a little act that he had, but everybody was terrorized.

LaBerge: Did you like criminal law, even then?

Reilley: I liked it pretty well, yes. But I really didn't plan on becoming a criminal lawyer. Actually, criminal lawyers then were kind of a subculture of the bar. They were not thought of as being at the level of somebody who represented PG&E [Pacific Gas and Electric Company], or something like that.

LaBerge: But you didn't have a thought of what you would be doing.

Reilley: No.





## II WORLD WAR II, EARLY CAREER, AND FAMILY

Naval Duty, 1942-1946

LaBerge: Because the war kind of took over?

Reilley: Right. Especially in the last year. Actually I was kind of riding along on an exemption to finish law school. I finished law school, took the bar and passed the bar. And that was the end of any legal practice. I went into the service as a civilian the day after Pearl Harbor [December 7, 1941], and then I got a commission in February of '42. I worked in the cable censor's office in San Francisco. Then they were asking for people who wanted to volunteer to go for training for sea duty. I volunteered for that. That is around April of '42. I went back to Chicago, where they had a school. I went through there learning the difference between the bow and the stern on a ship. Then I came out here, went overseas--joined up with a ship. I was over there for about fourteen months. Came back--I had trouble with my lungs. I had pneumonia. So I was at Oak Knoll [Naval Hospital]. I was sent soon with orders to put a hospital ship in commission in Long Beach--San Pedro. After commission, we took that ship out. We were out until after the war was over.

LaBerge: You were just in the Pacific Theater, no definite--

Reilley: Well, I was in the invasions of Leyte Gulf and Okinawa. At the end of the war, of course, we were waiting to invade the home islands.

LaBerge: So you were doing kind of supervisory work in the navy?

Reilley: Well, actually, I was a deck officer and became a seaman. A lot of people were doing things they never thought they were going to be doing. I was the first lieutenant on the hospital ship and then I became the executive officer.

LaBerge: When did you actually get discharged from the navy?

Reilley: 1946.

LaBerge: Were you married by this time or not?

Reilley: No. I didn't get married until 1949.

LaBerge: When you got out of the navy, is that when you went into private practice?

Reilley: Yes. I went out, oh, I don't know, not quite a year, maybe, about a year I guess, in Berkeley, with a man by the name of [Gordon] Byers.

LaBerge: And doing just general practice?

Reilley: General practice. I had my one divorce case and I knew I never wanted to do that again.

#### Willard Shea and Experiences as a Public Defender

LaBerge: And so, that's when you looked for the job at the Alameda County Public Defender's Office?

Reilley: Yes. I just saw this circular that came out, maybe it was in the legal paper or something--said in their ad that they were looking for people to take this exam. I said, well, why not do it, you know? So, I did. I took the exam, and passed that. But as I say, they already had somebody who was there on an interim appointment and they were going to give him the job. So, I thought, well, that's just another shot in the dark. Then they called me up shortly thereafter because one of the other people in the office had left and they had an opening. Willard Shea interviewed me--a very interesting man.

LaBerge: How do you spell his last name?

Reilley: S-H-E-A. Willard Shea. Old Willard is now dead, of course. I remember he interviewed me, and I wasn't married yet at that time. Willard figured, how old are you, and I said, well, I'm twenty some-odd, whatever it was then. He thought, how come no one wants to mess around with this guy--is he going to turn out to be wearing laced underwear or something? People were a little less tolerant, I guess, back in those days. I said, no, but I'm

planing on getting married [laugh]. So, I passed muster on that. I got through that.

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LaBerge: Let's go back--before we turned on the tape we were talking a little bit more about the Alameda D.A.'s office and Willard Shea. You were telling a story, first of all, how he defended someone in the Shipboard Murder Case. Why don't you tell me a little bit about that?

Reilley: Mr. Shea was the first public defender of Alameda County, which I later worked for. He represented one of the defendants in what was known then as the Shipboard Murder Case, which was a case that arose out of a labor dispute in Oakland or in the Bay Area, I guess. As part of that dispute, a chief engineer of a ship that was docked in Oakland was killed--was beaten up and killed. It was alleged that it was done as part of the union dispute although I'm not familiar with all of those details. There were several defendants. The suit was brought by the Alameda County District Attorney's Office, which was then headed by Earl Warren. Mr. Shea defended one of the defendants so he was, of course, well acquainted with Earl Warren. I have to say he had a great deal of respect and regard for him.

LaBerge: You were telling me also about a young woman you defended when you were working for Mr. Shea, and Ralph Hoyt.

Reilley: Yes. When Earl Warren was elected to be the attorney general of the state and left the Alameda County District Attorney's Office, Ralph Hoyt, who was his chief assistant, was appointed D.A. He was a very rigid law-and-order man. He later became a judge. I have an idea that he was appointed by Earl Warren when he became governor--I'm not sure about those dates. In any case, he became a judge and he carried over his point of view from the district attorney's office to his activities as a judge.

He at one time was sitting as the juvenile court judge in Alameda County when I was assistant public defender. As I mentioned, one of the wards of the court, who was brought before him, was a young woman, who during World War II had been a resident here in Alameda County. I think she was probably a farm girl who came out here and got into bad companions and got into trouble. Because she was under age, she was made a ward of the court and supposed to be under the supervision of a probation officer. But she left town and didn't comply with her reporting requirements. In any case, she went down in the Valley somewhere and straightened her life out and became married and had children. This was right after the war, a couple of years, I

guess. So, somehow or other, they located her, brought her all the way back here to Alameda County and charged her with violation of her probation.

At the time she was brought before the juvenile court, Judge Hoyt was sitting and he made it known that he was very outraged by this and was going to put her in jail, which seemed to be a rather outrageous result. So, I went back and talked to Willard Shea. He concurred that he thought Ralph Hoyt would certainly put her in jail; what we ought to do is see if we could stall the thing off long enough to get some other judge back there who was a little bit more compassionate, which turned out to be the case. Judge Hoyt went back up to the main courthouse and the other juvenile court judge took over. I'm not sure, but I think it might have been Judge Shine, who was a very compassionate man and a very nice man; he took over and we succeeded in having the young lady continued on probation and she was sent back down to her family in the Valley. So, that's a rather satisfying result as far as we were concerned.

LaBerge: I'm glad you told that story because it shows something about Willard Shea, too.

Reilley: Yes. Willard Shea was a very fine man. Willard Shea was a very interesting man. He had once been a postal inspector and he was kind of a self-taught lawyer in a way. He was a very--I wouldn't say--I'm trying to put it that he was very interested in conserving money in the interests of the office because he was appointed as a first public defender--I guess we were one of the first in the state. He always had the idea that the board of supervisors was very ambivalent about this and might abolish the whole thing, you know. He may well have been right. He always felt that we were existing on borrowed time. We always kind of had secondhand furniture in the place. I remember he used to sit in an old office chair but somehow or other the spring was broken and every now and then he would just kind of flop back and disappear behind the desk. [laugh] I was always kind of amused by that.

Nonetheless, I must say, I had a lot of respect for Mr. Shea; he was a very fine man, and very dedicated to his job of trying to defend people. We only defended people who were charged with felonies, unlike now when they defend people who are charged with misdemeanors who can't afford to hire an attorney. At one time we thought we would have a go at maybe expanding to take care of people who were charged with misdemeanors, because they really needed that because they could be sentenced for as long as a year in county jail. By that time, in Los Angeles they were representing misdemeanor defendants. Mr. Shea had said, Why



don't you go down to Los Angeles and take a look and see how they operate down there? So, I did. I went down there and spent a couple of days with the people in the public defender's office in Los Angeles and came back and drew up what I thought was quite a good program.

We went down--they had a judge down there--Judge Joseph Kennedy, a big, old Irishman--Mr. Shea and myself, we went down there--in those days it was known as the Oakland Police Court. It wasn't known as the municipal court. This old judge was the head man of the police court. Frank Coakley, who was then the D.A., came down, so we all met in this place and Mr. Shea presented this thing, you know, and this red-faced judge turned to Frank Coakley and he says, "Frank, we don't want to be doing this, do we?" Coakley says, "Well, I think we could be defending just a bunch of old drunks around here," he says, "I don't think it's a good idea," and that was the end of the meeting! [laugh] So, we turned around to each other, and we got up, and walked out and that was it. We never heard another word about it. So, it was really quite an interesting experience. But, I don't know--of course since then they have a different view on these things.

LaBerge: Maybe someone found your old paper that you had written and expanded on it.

Reilley: I don't know. I would doubt that. It certainly was something that I thought ought to be done, but it was kind of dismissed offhand.

LaBerge: Tell me again who Frank Coakley was.

Reilley: Frank Coakley then became the district attorney, and was for many years, and was actually a good friend of mine. Frank Coakley, well, I played golf with Frank quite a few times. He was a bulldog. Frank Coakley was the man who prosecuted the navy people, the defendants who were charged with mutiny out at the naval weapons station in Concord during World War II. He was a commander during the war in the judge advocate's office. Of course, before that he had been the prosecutor in Alameda County and was a prosecutor after the war. He prosecuted the sailors who refused to load the ships after the explosion in Concord.

LaBerge: I knew the name was familiar and now that's coming back to me. I hadn't realized you were in the public defender's office in its infancy.

Reilley: Yes.

LaBerge: Mr. Shea has a very short interview in that volume,<sup>1</sup> but he mentions you and the fact that he expected you to follow him. I mean, you told me a little bit about that story, that you expected to get a job also and it was sort of political that you didn't.

Reilley: Yes. Well, it was very much so. I don't know whether it still is, but the public defender's office is a civil service job, or was, at least, in Alameda County--although they're appointed by the board of supervisors. They gave an examination when Mr. Shea was going to retire. He anticipated, and I must say that I did, too, that I would succeed him. I took the examination; they had an outside board give it. There were only two of us that took it: George Nye, who was the deputy D.A., and myself. I had a score of 100 plus 5 percent for a veteran. I had a score of 105 percent so I felt reasonably confident that I would get the job.

But, Nye was a little bit more astute than I was. He had arranged with young Cliffie Wickson who got a job up at the D.A.'s office as an inspector--they have several people as inspectors. He told him that if he got the job he would appoint Cliffie as the chief investigator. The nub of that is, of course, that Cliffie's father, Cliff Wickson was a mem--.

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LaBerge: Okay, Cliff Wickson was a member of the board of supervisors.

Reilley: Yes, he was, and he was retiring from the board. I learned later, by talking to a man named Jansen, who was also on the board of supervisors from my district, that Cliff Wickson had come in before the board members and told them, "Look, I'm going to have this job," because basically, he was going to fix his son up before he left. He, in effect, said, well, by God he was going to have the job, and so the board appointed George Nye to be the public defender.

Very shortly thereafter the board tried to appoint Cliff to this new job, which the board also created. The members of the Civil Service Employees Association raised so much sand over that, because of the fact that they were going to appoint him without having a civil service selection process, that then Nye backed down and fixed up the examination for this job. Part of that story is that, the office between Nye, who took over the

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<sup>1</sup>Willard W. Shea, "Recollections of Alameda County's First Public Defender" in *Perspectives on the Alameda County District Attorney's Office*, Regional Oral History Office, University of California, Berkeley, 1972.

public defender's office, and myself, which was adjoining--the partitions are very thin, so I could hear him and Cliffie in there cooking up what questions they were going to ask on the examination. So, I felt pretty confident that Cliff was going to pass the examination, which, of course, he did, and was appointed.

But, I have to say that creating the job of inspector and having some inspectors was certainly a desirable one because we needed them. Up to then we were doing all the investigations ourselves. But, I felt pretty bad for a while about not getting that job. A lot of people thought that the reason Nye got the job over me was because his wife was the daughter of a prominent writer for the *Oakland Tribune*, Nancy Bar Mavity.

LaBerge: Can you spell that for me?

Reilley: Yes, M-A-V-I-T-Y. But, that wasn't the case at all, she had nothing to do with it. It was actually just a situation where a member of the board wanted to get his son in a position where he would be taken care of. That's the way I ended my career as a public defender.

LaBerge: Mr. Shea, in about a paragraph, seconds your opinion about that. So, you'll enjoy seeing that.

Reilley: Yes, well, I always say I had a great deal of regard for Mr. Shea.

Janet Ruggles Reilley and Family##

LaBerge: Tell me about meeting your wife.

Reilley: Well, she came out here to take a master's degree at the university.

LaBerge: From where?

Reilley: Where's she from? La Crosse, Wisconsin. She had gone to the University of Wisconsin, the branch in La Crosse. She was interested in public health education, the kind of work she was doing back there, and she wanted to take an advanced degree in the school out here. I guess it had a good reputation. And so, she came out here to go to school. We met through mutual friends. And one thing led to another, right?

LaBerge: And you convinced her to stay in California? [laughs]

Reilley: Well, she liked it in California. She hated cold weather. She said she had had enough of it. My wife was a terrific golfer. I don't know how she ever had the patience to put up with me. She should have been discouraged from marrying me because she used to entice me to go out and play golf with her and then beat the sox off me. She was in the finals of the amateurs in golfing, in Wisconsin--

LaBerge: Oh, my goodness.

Reilley: --when she was only about sixteen or so. Yes, she was a terrific golfer, good athlete. Unfortunately, my wife, about five years after we got married, had polio. That put an end to her golfing and left her pretty seriously handicapped.

LaBerge: Oh, I guess so. Then you already had four children by then?

Reilley: No, we had three. She was giving birth to the third child when she got polio.

LaBerge: What was her name?

Reilley: Janet. Janet Ruggles.

LaBerge: Did you always live in Oakland? Is that where you raised your children?

Reilley: Yes, well, actually, we lived in Alameda first. When she got polio we had to sell the place that we had because it had two stories. We lived for a while in a rented place in Alameda. Then we eventually built this place up--you know where Joaquin Miller Road [in Oakland] is?

LaBerge: Yes. I live quite close to there, in fact.

Reilley: Well, we lived on a place called Buckley Court which is right off Butters Drive.

LaBerge: Yes. I know exactly where that is.

Reilley: We lived there for about thirty-nine years. My wife died in 1979.

LaBerge: Well, since we're talking about your family, tell me the names of your children.



Reilley: My oldest one is Margaret. My next one is Janet. My son, the oldest son is John.

LaBerge: John Junior?

Reilley: No, he's John Joseph. And my youngest son is James Anthony.

LaBerge: And he's the one who's in law school now.

Reilley: Yes.

LaBerge: I wonder if he's going to follow in your footsteps.

Reilley: I don't know what he's going to do. It's kind of interesting. We never know. I always ask people how they get into the kinds of work that they are doing. It's always amazing to me. Very few people are doing precisely what they thought they were going to do even though they study to be a doctor or whatever. There's an awful lot of chance involved in life.

LaBerge: It takes a perspective like yours to realize that.

Reilley: So many young people say, gee, I don't know what I want to be. You say, what difference does it make? I mean, you just keep moving ahead, and you'll find something that you really like to do, then do it, you know.

LaBerge: Did any of your children follow you to Saint Mary's or did your boys go to Saint Mary's High?

Reilley: Three of them went to Bishop O'Dowd [High School]. My son, Jim, went there for a year and then he went to Skyline [High School]. Margaret went to San Jose State [University] and now she is taking a master's degree at Hayward [State University]. Janet went to [University of California at] Davis and then went down to Berkeley--got her bachelor's in English and then went up to [University of] Oregon and got her master's in journalism. Then John--he's gone to several schools. John went two years to [University of California at] Santa Barbara and then he went back to Wisconsin and went to the University of Wisconsin at Green Bay. He met his wife up there. Then he came back here and spent some time with San Francisco State [University]. Then eventually he went to Texas, Texas A&M [University], and got a master's degree in agriculture.

LaBerge: Okay, now he's there in Corpus Christi?

Reilley: Right. Yes. He's got a lot of little Texans down there now, three kids. I expect to see those little guys coming around with boots on.

LaBerge: Maybe we'll end there for the day because we've kind of gotten you to the district, and the next time we can pick up with when you started working there.

### The Mokelumne River and the Lodi Decrees

[Interview 2: January 22, 1996]##

LaBerge: We were talking about the district records and how they are still very pertinent from the days of Pardee.

Reilley: It's interesting how they do come up. In acquiring, for example, the rights of way for the original aqueducts that came down from the Mokelumne into the East Bay--those days most of it was farm land, of course--but they made agreements with the farmers to put the rights of way through their land. The district required them. Sometimes to make a satisfactory arrangement with the farmer, because we're cutting through his property, we'd enter into some kind of agreement that would let him use part of the land for various purposes. Later years it would come up as to what kinds of rights he had to use it.

Also, in acquiring the water rights originally in the Mokelumne River, the district entered into agreements with PG&E and also with the city of Lodi and the Woodbridge Irrigation District. Those agreements, of course, are still very pertinent because they govern the law of the river. They're consulted even today, although they're ancient documents as far as age is concerned.

LaBerge: Are we talking about the contracts before you came to the district?

Reilley: Yes. The district had a great struggle to acquire the rights on the Mokelumne River because PG&E had already developed dam sites to generate power on the Mokelumne River. And they had some prior rights. Some rights the district had superior to theirs. Also, the downstream operators, some of the irrigation districts, particularly Woodbridge Irrigation District, had old rights on the river that had to be respected, and the city of Lodi. So, there was a series of lawsuits that eventually were resolved or they went up on appeal and came back down to the

trial court. They were settled by a series of agreements that defined how the district was to operate its facilities and how the other parties would operate their facilities. They are collectively known as the Lodi Decrees. The Lodi Decrees are, of course, very pertinent to this day, although with the changes in water law they may well be not as critical as they once were, at least as far as [California Department of] Fish and Game--the releases that are required into the river--are concerned. There is a development now, what's called public trust in water law, which seems to override a lot of what's thought to be settled rights in water law.

### Overview of Water Law

LaBerge: Would the settled rights be riparian rights or something else?

Reilley: Well, of course, in California you have a hybrid system of water law. You have riparian rights which are not as significant as they may have once been, but they are the rights of the owners who own land adjacent to the stream. You also have appropriative rights which you gain by applying for them and getting a license from the--what is now known as the State Water Resources Control Board. Those entitle you to certain rights. There are rights which were called "ancient rights" which people have had because of their usage, dating back to before the time when they had appropriative rights, which are rights that you get from the State Water Resources Control Board. The question is always how much of those rights and what's their status and so on. You have those, really, three sets of people who make claims on the water and stream.

I should backup and say that there was a period when riparian rights could take priority over appropriative rights regardless of whether there was a comparable use. A constitutional amendment was passed by the state which said in effect that there was no right to waste water, but that you had only a right to the reasonable use of water and reasonable method of use of it. That constitutional amendment and those provisions prevailed over all the different types of uses. That places a restriction on your right. You don't have a right, for example, to use water just to spray on grape vineyards, for example, because that compared to some other use, for example, for municipal use, might be considered a waste of water or an unreasonable use of water.

Over and beyond that now, we have something which the courts have developed in fairly recent times--the public trust in water --that somehow or other, there is a trust residing in the public for the beneficial use of the water which overrides any private right, even those that are acquired by appropriation or riparian rights, for that matter. In other words, the public has an interest in the health of the stream; basically, for fish or perhaps even for recreation.

LaBerge: Would that public trust take precedence over municipal uses?

Reilley: All of these things are still in the process of being unraveled by the courts. Whether they do take precedence over an existing public municipal use--there's some doubts about that. You have a problem too with power generation. If you have a dam or other facility on the stream to develop use for power purposes, you have to get a permit from the Federal Energy Regulatory Commission, which gives you a forty-year license to utilize the water of the stream. Overlying all of this is something called the "waters of the United States."

LaBerge: That's right.

Reilley: They say that when they give you this power license, even though you might have an appropriative right from the state of California for the use of water, in order to put up that power station you have to get a permit from the federal commission. They put on further conditions as to how you can use them. Also now, when the forty years is up, as it is in the case of the East Bay, to get that renewed, they have a lot of new restrictions which they didn't think of forty years ago--basically for the use of fish and that sort of thing. You have a lot of different people with their hands in the pie.

LaBerge: So, what East Bay permit is coming up for renewal?

Reilley: That's with the Federal Regulatory Commission for the power generation which exists at Pardee [Dam].

LaBerge: At Pardee, okay. Only at Pardee, or anyplace else?

Reilley: Well, the renewal that we're talking about, as far as the East Bay is concerned, is for Pardee. We also have power generation at Camanche, but that's more recent.

LaBerge: You really stay up on all these issues.

Reilley: Well, you can't have done something for that length of time without retaining an interest in it. Of course, I should say



though that it's a general knowledge. You don't have the day-to-day knowledge that you have when you're faced by those problems-- as Bob Helwick, the present general counsel of the district, is now. He has to sleep with those, you know?

LaBerge: Do you get called as a consultant still?

Reilley: No, not anymore. I did for a few years after I left the district, for about three years. But after the suit by the Environmental Defense Fund was settled, I really didn't have much direct consulting with the district.

LaBerge: I want to remember to come back to that when we talk about your retirement and what you did, to consult--come back to that suit. When you were there, were you the one who negotiated, for instance, what the federal commission, over--

Reilley: At that time we didn't have that particular problem because the license had not become ready to expire. Actually, it began to become a problem more when Bob Maddow was there.

LaBerge: It wasn't something you had to negotiate as far as the life of the permits.

Reilley: No, the only thing we had to do was get a license for the facilities at Camanche which had had some low level power facilities there.

LaBerge: I hadn't realized that the power generating permit or structure was connected to the federal government. I guess I just assumed it was run by the state.

Reilley: Right. It's kind of a combined deal because, you see, the rivers of the United States are not only within the state they're also considered to be waters of the United States. If you want to build a dam which is going to have power facilities you have to get a permit from the Federal Regulatory Commission.



III LITIGATION FOR EAST BAY MUNICIPAL UTILITY DISTRICT, 1951-1966

Interview with Louis Breuner

- LaBerge: In our last interview you told me the story about how you interviewed for your job with East Bay MUD and how you intended to stay maybe two years or so until you found something better.
- Reilley: Right, exactly. I thought that I would go--well, let's back up. When the thing became obvious that I wasn't going to get the job at the public defender's office, I immediately started to look around for some other employment. I have to say that, although I had some prospects, jobs were not as readily available for lawyers then as they apparently are now. I went out to the university, to Boalt, where I graduated. I asked them what kind of prospects they have, any jobs. Well, they gave me a list. One of them was the East Bay. So, I said, well, I'll go down and find out what's happening down there. The thing about it is my dad worked there.
- LaBerge: That's right.
- Reilley: So, I had this interview that was set up by John McFarland, who was the general manager, and Louis Breuner, the president of the board. They took me over to the Athenian Nile Club in downtown Oakland. We had a very nice lunch and they were probing me, of course. Finally, Mr. Breuner got around to trying to broach this subject as diplomatically as he could. But he, in effect said, "Well, you know, if you're going to be with the district, you're going to be a part of management." And he said, "You know, your dad works for the district; how would you feel about that?" Well, actually that got me pretty mad, to tell you the truth. So I told Mr. Breuner, I said, "Well, look, if I'm half as good a man as my dad is you'll be getting a pretty damn good employee."

Well, that kind of ended the subject there. I left and I thought, well--

LaBerge: I just blew it? [laugh]

Reilley: [laugh] I'm not sure that's going to work out. But later on, sure enough, Hal Raines, attorney for the district, called me and said that I could have the job if I wanted it, you know? So, I went to work for the district. It was kind of a good time to go to work for the district, although frankly, as I told you before, I really didn't intend to stay. I had other ideas. As I mentioned to you before, my dad wasn't very pleased with me either. He thought I could do better.

As I say, it was a good time because they were embarking on a program--what they called a "ten-year expansion program." That involved just a lot of construction work, a lot of land acquisition and a lot of pretty exciting stuff. They were attempting to acquire further water rights on the Mokelumne River. Things were interesting and absorbing. And then I just kind of kept going there.

And then, I guess it was about 1954, my wife got polio and she was giving birth to my oldest son. We had two other little children. She was very severely handicapped and was for the rest of our lives together. So, I wasn't in a position too much to move, although I don't know that that would have particularly foreclosed my moving to another job, if my situation in the district had not been a satisfying one.

As time went on it became obvious--at least, I don't know how obvious it was, but it seemed like it was reasonable to expect that I would succeed Hal Raines. So that five-year job or that two-year job, whatever it was, turned into a thirty-year job.

#### Annexations for Expansion Program, 1955-1965

LaBerge: When you first came what did you think you were going to be doing?

Reilley: Well, I knew that they were going to need some litigation, someone who could litigate because they were going to acquire a lot of land. We were acquiring a lot of land out here in Briones Reservoir. There was a lot of land being acquired for tanks, various projects, there were going to be construction contracts,



and things of that kind. Also, the district was expanding, taking in more territory. That was another problem that pretty much revolved on me in handling those.

LaBerge: Did that mean negotiating with people?

Reilley: Yes. Actually, what would happen is--take an example down below in San Ramon and Danville. A group of people would want to get use of the district's water supplies. And then there would be developers, and then there would be some people who would be getting the water supply from some other source. They would come together, come into the district and say, well, how can we go about doing this? Basically, it would involve a financing problem, an engineering problem in laying out how to serve them, a technical problem in how do they organize, how to be annexed. There are provisions in the act for annexations, but that has to be spelled out, filled out. Basically, what we would do, we'd form a district in the area that was the annexed, issue a bond issue, and then annex that public agency to the district, and then use that as a means to pay off the bonds of that district that they had formed. They would, in effect, be a member of two districts; one for financing purposes and the other for actually receiving the water supply.

LaBerge: Was San Ramon and Danville one of the earliest ones you did?

Reilley: Well, first of all, I think, would be an area called Cherry Land, which was out near Hayward. And then we had Hercules and Pinole, in that area. The Hercules Powder Company owned an area there where they were pulling their plant out. They had a lot of company houses there, and they wanted to get out, and they wanted somebody to take over as far as the utilities were concerned. And so, we did that. And then we took over down below Danville and San Ramon.

LaBerge: Was there public outcry the way there is today about developers?

Reilley: No, not as much. Actually, there was virtually none because housing was an important factor, particularly after the war. There was a dearth of housing, a lot of people pouring into the area, and a need for someplace to house them. So, bringing in a water supply and that sort of thing was thought to be desirable.

Aesthetics of Water Tanks

Reilley: The thing that really came into the picture, as far as the environmental aspects in those earlier days, was a kind of antipathy to the tank that was being built to serve them. They had an idea--some number of people--that these were ugly, which they are. They're a very utilitarian type of an object, you know? A tank is a round metal or concrete object which holds water and that's about it. The district tried all different kinds of ways to get around that by planting trees, painting them different colors.

The one thing they did do is they tried to build something called a "lotus tank." That's out near Lake Chabot, up near the golf course. This architect came in with this design--it was not a round tank at all. There were different configurations that would be architecturally pleasing. The only problem, our engineers were kind of horrified by this because they had never heard of such a thing because there's all different kinds of facing that would have pressure points--which turned out to be exactly right. This architect designed this thing and it really looked quite attractive, except for the first time we filled it up, it broke, it burst, and the darn thing shot water all over. Fortunately, it didn't kill anybody, but it was a fairly good-sized water tank, and so when it broke, it really caused a lot of damage to surrounding houses--landscaping and whatnot. That ended the effort to build--

LaBerge: To build beautiful tanks?

Reilley: Beautiful tanks! They tried in later years. They devoted themselves more to landscaping and that sort of thing.

LaBerge: When this particular one near Lake Chabot burst, did they rebuild a different kind of a tank or did they fix that?

Reilley: No, they couldn't fix it. It was un-fixable, but they built a different, but more conventional type.

LaBerge: I know I read about the city of Albany protesting because they didn't want a reservoir up on the hill, and there was some controversy over that.

Reilley: Exactly. There was a very strong movement out there in Albany. There was a woman [Kathy Zahn], who was on the city council; she was quite an active person, who was opposed to that tank and all other kinds of tanks, as far as that's concerned. Yeah, that was quite a period of controversy over these tanks that were being

built because they say, during this ten-year period, they were building a lot of tanks and building a lot of other facilities to expand the system.

Hearing Before Contra Costa County Board of Supervisors

LaBerge: What would your role have been in that when there was controversy? Were you the one who had to negotiate or--

Reilley: Well, not really. Usually that was done by the people in management, and those PR people and managers. We'd get involved when we had to go before a planning commission, or something of that sort. I remember one of the first times I had anything to do with that; the district owned a lot of property at the crossroads--you know where Orinda Crossroads is now? All that property, north of what is the freeway, was owned, including that place where the John F. Kennedy University is. That was known as the Pine Grove.

LaBerge: Okay. I think it has that name for a road now, too; Pine Grove Flat or something like that.

Reilley: It might, because there were a few scraggly-looking trees up there. For some reason, people got it into their heads that this was a really defining landscaping aspect of the whole community. This district owned all the property and wanted to sell the property. There was a number of people who wanted to buy it, some service station operators, and then there was, what was known as PIE--Pacific Intermountain Express, a big trucking outfit. They wanted to put a headquarters up there where the pine grove was. That was kind of like desecrating the Sistine Chapel.

In any case, there was a great deal of resistance. In order to sell it we had to get the property rezoned. I remember going up before the [Contra Costa County] board of supervisors--they thought that was a fairly sensible thing to do. But I remember the first meeting I went to out there. William Penn Mott, who I'm sure you're familiar with William Penn Mott. William Penn Mott, who had been the head of the [East Bay] regional park district, I guess, by that time--he was no friend of the East Bay MUD. He was out there--that room was filled with people. William Penn Mott was leading the charge. So, I was up there--this wasn't too long after I came with the district--I was sent out there to carry out this, presumably, routine function and appear before the board.

When I got through with my statement, Mott got up and said, "This project is opposed by people from MORAGA," and a bunch a people from Moraga would jump up and they'd have signs, "MORAGA." Then he'd say, "This project is also opposed by the people from LAFAYETTE." The people from Lafayette would jump up--these good ladies and they'd have these signs, "LAFAYETTE." And he went through the whole litany of everybody that was in twenty miles of the pine grove. They all crowded there and they had their little signs, you know. He got through, and I could see the board of supervisors gradually slumping down in to their seats, you know. I knew, boy, this thing, this is not going to go.

So, they sloughed it off in some manner. I don't know, it took us, I don't know how long, but a long time. We had to work out some kind of a special planning device that would--I think they called it a "planned unit development," and had to have so many setbacks and so many parking places and all kinds of restrictions of one kind or another. Finally, we had meetings with different movers and shakers of the neighborhood, you know? Eventually, they came around enough so that we finally got this "planned unit development" adopted and then sold off the property. You can see it down there now, everybody goes down there and shops and never thinks about it--the pine grove is long since gone, you know? So, it was quite an interesting period.

#### Recreational Facilities at the Reservoirs

LaBerge: So, those are the kind of things you did. I know that that was a time the district was selling off a lot of property, wasn't it? I'm trying to think of what other ones I have read about. What other places, or were there any other anecdotes about other properties like that?

Reilley: Well, the district wanted to sell off various parts, had a lot of excess watershed lands. It got them from the old East Bay Water Company. Some of it had gone to the regional park district, but other parts of the district seemed like it would be sensible to sell it off and take the money and use it for district purposes. But that ran into quite a buzz saw because people wanted to retain the hill areas.

So, the district got SRI [Stanford Research Institution], the Stanford outfit down there, to come up with a kind of a master plan. The district tried to work with committees of the local citizenry and develop a master plan for the use of its facilities; those things which would be used for open space and



some for recreation and so on. I think in the back of their minds, the management anyway, was the thought that maybe if they did this they would be able to sell some of it. But that didn't work out. Actually, it had a moratorium on sales while this plan was being worked out, and as far as I know it's never been lifted--the district has retained the property, and actually it's gone into more recreation, as you probably know, they have recreational facilities at all of their local reservoirs, and also at the reservoirs up at Pardee and Camanche.

But that was, of course, a long-drawn-out struggle over fishing in the reservoir. The district engineers are very conscious of pollution and concerned about the pristine quality of the water. Resisting that, of course, the district, from a financial standpoint, wasn't all that interested in opening up recreational facilities because they're not money makers by any means. But they had a lot of pressure from local fishermen and people generally. There was an assemblyman from Richmond, by the name of [S.C.] Masterson, who was very active in this and went to the legislature. They had legislation which in fact made it imperative that the district bow to the wishes of these people and provide these facilities, which of course, they've done rather extensively throughout the district.

LaBerge: I have jotted down here that Masterson's bill was in 1959 [A.B. 286]. Does that sound right?

Reilley: That sounds pretty right.

#### Sacramento Representation

LaBerge: When that was going on, did either you or Mr. Raines go up to Sacramento and testify? What was your involvement?

Reilley: Hal Raines did all of that. He worked with the legislature during the time he was here. Later on, of course, I took on that, but by that time we had a representative. Well, we actually had a representative later on when Hal Raines was there, too. At least initially he was the representative in Sacramento as well as the attorney. When I took over we had, of course, a representative in Sacramento full time by that time. Rod Franz was our representative there. Of course, I took part in a lot of that. One time I was chairman of the legislative committee for the California Municipal Utilities Association. So, I did a good deal of work in Sacramento. The district had, within house, a

legislative committee of the board with the staff which I was a part of.

LaBerge: That would just keep track of legislation coming up?

Reilley: Well, yes. What happened is that Rod Franz would be culling everything that came up; anything that he thought had any relationship with the district. It would come down to us. We would look through it and write up an analysis of it insofar as its effect on the district.

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LaBerge: So, Rob Franz would send you legislation that might affect you and you'd give it an analysis.

Reilley: Right. Then we would go before the legislative committee. The district would meet every week or two and we would take a position on it. Rod then would operate as far as that was concerned up in Sacramento. Sometimes we would attempt to write some kind of amendments, or write some new piece of legislation.

LaBerge: If you wrote a new piece of legislation, who would you give it to to introduce? Did you have certain friends?

Reilley: We'd send it up to Rod. He would then select someone who he thought would be able to carry it. He would attempt to get allies, of course, that was desirable. Some other districts and some other people in the water business were there.

#### Fish and Game Negotiations

LaBerge: As far as the--I don't know if it's Fish and Game--does Fish and Game have anything to do with developing the recreational facilities?

Reilley: Yes. Yes, they do.

LaBerge: What more did you do actually on that?

Reilley: Well, we might for example, in the case of Pardee, we had an agreement with Fish and Game--maybe that wasn't Fish and Game, maybe that was [California] Department of Recreation, I guess it is. They had a fund with which they would help finance boat launching. So, we built boat launching facilities up there for

people with boats to use on the lake. Also, we'd have agreements with Fish and Game for stocking the lake. In fact, we had agreements to stock upper San Leandro and Lafayette Reservoirs. But then, over and beyond that, we'd have agreements with Fish and Game for releases from the Mokelumne and from Camanche, which date back principally from Camanche which, in order to get those water rights we had to make agreements with Fish and Game to release a certain amount of water. I should say they're under review right now. All of this business about how much we should release is currently under review--probably Bob Maddow could give you a better take on that. But basically, when the district built Camanche Reservoir it agreed to build some fish hatchery facilities, fish spawning channels and entered into agreement to put up the funds for that and also to make certain releases from the reservoir for downstream fish.

LaBerge: And that was all part of--the getting more water from the Mokelumne--what Mr. Raines was negotiating?

Reilley: Yes, right.

#### Relocation of Calaveras County Roads

LaBerge: Did you also go up and negotiate with either the counties or with the officials from Fish and Game?

Reilley: Well, that wasn't so much--Hal was handling the water rights and the Fish and Game. I was handling the land acquisitions. Also, one of the big problems we had up there at Camanche was relocating the county roads.

LaBerge: Oh, I read something about that. Let's talk about that.

Reilley: Well, you should understand that while the district has the power of eminent domain and can condemn property, and did, it can't condemn a county road. So, there were county roads laced through the site of where the reservoir was to be built. We had to negotiate with the counties to build a reservoir. The counties viewed that as a golden opportunity to get whatever they could, naturally. So, that was a long-drawn-out negotiation.

Bechtel built the reservoir. I remember they had a fellow who was supposed to be a trouble-shooter. This little guy came into my office--I was doing all the land acquisitions and condemnations--I was telling him, "Look, you guys have got a schedule here but we've got a lot of problems here with these

county roads." So he said, "Don't worry about that, Bechtel can handle the whole thing." I said, "If you knew those people up there as well as I do, you're being rather optimistic." So he said, "Don't worry about a thing, it's all taken care of." I said, "Fine."

Well, week after week and month went into month and they're getting ready to build the reservoir and they still haven't got the roads. I said, "What happened to that guy that was going to do...." He was gone! Somehow or other I guess they no longer could sell him on the project of what he was supposed to be doing. So it fell on us.

I went up there and I remember, one day we were trying to go from--Calaveras County was meeting over at San Andreas on one side of the river. The board of supervisors of Amador County was meeting over on the other side of the river, in Jackson. So, McFarland and I were going between Amador County in Jackson--we were trying to mollify these guys, you know. Calaveras County was fairly well agreeable which they should be because they were going to build practically a superhighway around the reservoir in return for these old broken down cow tracks, you know, that the county had from the miners, I guess, in '49. We got those all right, so then we went across to Jackson.

I remember there was a big, old guy who was the chairman of the board of supervisors. He was looking down on us. McFarland, you know, I don't think he was used to those kinds of negotiations. This guy looked down on him, "Mr. McFarland," he says, "Business is business." He said, "We're going to get what's necessary for the county out of this," you know. So, that kind of ended that meeting. We were walking out, I remember this Senator [Edwin] Regan who was a senator from Weaverville up in Trinity County, I think. He was sitting in the audience and he was laughing, you know, at McFarland. The senator was appointed counsel of the north for one of the railroads.

The railroads, at that time, were having competing negotiations with the Northern Pacific, I think it was, and a couple of the other roads were trying to annex one or the other; merge with them. So, which one was going to gobble up the Northern Pacific. It was kind of important to have somebody go around to the different boards of supervisors and city councils and what not, and get them to endorse one railroad or the other.

They'd hired old Senator Regan, who later became an appellate judge. He was there as their counsel to persuade the board of supervisors of Amador County to support whatever railroad he was being hired by, I guess. He later was a judge in



a case involving the East Bay. He was the dissenting judge against us in a case so I don't think old Senator Regan was one of our supporters.

But, later on we finally reached agreement with Amador and Calaveras for the roads. Talk about Fish and Game, one of the things we agreed on was that we would give the counties the first right of refusal to develop the recreation at Camanche Reservoir, which they did. They took that over and had a kind of a joint powers agreement to run the recreation area, which eventually turned out to be not very satisfactory, either from their standpoint, or from the East Bay standpoint because the facilities were not very first class. So, eventually the East Bay took over those facilities and developed them.

LaBerge: And does the East Bay still run them?

Reilley: Yes, they do! Yes, they do.

LaBerge: What agreement did you eventually get about those roads? Was it your original offer to Calaveras?

Reilley: Well, we had to sweeten it up a little bit. I think one of the main things, of course, was this recreational facility. They had the idea, I think, that it could be quite a money maker for them, this recreation, which is a mistake because it isn't a money maker, it's a pain in the neck. They got that right and then, of course, the district built a very fine freeway--or parkway, around the lake, and of course, at sole cost to the district. I think they wanted to get the thing built anyway, really. I don't think they wanted to block it, I think they just wanted to make the best deal they could. Now, that's just what the chairman said. "Business is business," you know.

LaBerge: Was that all part of that original ten-year plan that was your kind of first...?

Reilley: Well, it was basically that because it increased the water supply. It's between '55 and '65, I guess, around there. From then on, from the later part the American River project took over.

LaBerge: I think we'll save that for another interview.

Reilley: Sure. Sure.

Joe Sidas and the Third Mokelumne Aqueduct

LaBerge: I'm just going to look and see what else we've got here. This is another, I think this has to do with the Mokelumne. You were telling me once a story about Joe Sidas?

Reilley: Oh, yes!

LaBerge: Does that have to do with the Mokelumne?

Reilley: It has to do with the Third Mokelumne aqueduct.

LaBerge: Okay, okay, why don't you tell me that? You told me a little bit off tape before.

Reilley: Yes. Well, the Third Mokelumne aqueduct was, you know, up to that time--when they developed Camanche there was the need for developing an additional third aqueduct to come into the Bay area. To make it clear, there was no water taken out of Camanche directly to the East Bay at all. The sole purpose of Camanche is to provide the downstream requirements that the district has obligations as far as other users. So, the water is all taken out of Pardee, but because you have Camanche, you're able to store and take more out of Pardee Reservoir. The Third Mokelumne aqueduct would also take water out of Pardee.

The Third Mokelumne was formed with a special projects section. I guess Mac, Walter McLean, had a lot to do with that. They also hired special projects people to design it and build it. Unlike Camanche Dam, which was turned over to Bechtel Engineering to build, the district had a resident engineer there, Orrin Harder, who was in charge of that.

The Camanche Dam was progressing and then the Third Mokelumne aqueduct was built--mostly on existing right of way but there was some additional right of way that had to be acquired. Particularly, I think I mentioned to you, was the fact that it was designed to cut through the levees. If you're familiar with the Sacramento Delta, the San Joaquin Delta, you know that those islands are all pretty much manmade. There are large levees which protect them. The district's aqueducts--the first two aqueducts went over the levees.

But this one was designed by--the third by Joe Sidas, who was an engineer from a European extraction, a Lithuanian. Joe was a very extraordinary guy. He was a very able guy. But, he was somewhat of an interesting personality because he was in Europe when the Russians, of course, took over Lithuania when

they went into the Baltic. So, when the Germans came and drove the Russians out, Joe was, of course, pleased to see the Germans because they were beating up on the Russians, I guess. But then when the Americans came, why, Joe went to work for the Americans. He was originally an engineer building railroads.

LaBerge: Oh!

Reilley: But he was quite a competent designer in all kinds of construction. So, he was put to work in designing the river crossings and he designed a method by which they would open up the levees and put big pilings in to hold back the water and then put the pipe along the bottom of the channel. This was a tremendous project because if you went there and looked at it, it would just scare the life out of you. Because you could see this huge hole and you'd see this big channel there with ships going up the darn thing. You'd think, God, I hope this thing works.

#### The Zuckerman Lawsuit

Reilley: But it did work. We had one really troublesome lawsuit that arose out of the acquisition of rights there because the road that was going to go in there went to a warehouse--there was a lot of agricultural activity up there. And so this warehouse--but it was pretty much abandoned.

It belong to people by the name of Zuckerman. They were represented by a lawyer from Los Angeles who was one of the most obstreperous guys I've ever come across in my life. He didn't really have an interest, I think, in resolving anything. I think he just liked to file motions and all kinds of legal maneuvers that had us up in the courthouse, up there in Stockton, about every other week. Zuckerman's contention was that by opening up the levee we were undermining this warehouse and it was slowly sinking. Actually, the ground up there was always sinking anyway because it's peat soil and it goes down another few inches every year, I guess. But, he was claiming that it wrecked the warehouse. Not only we had to acquire this little piece of ground which didn't interfere with his warehouse at all but that it was going to ruin the use of his warehouse forever. I don't know how many hundreds of thousands of dollars he was asking for. But mainly, we wanted to keep the construction work going because he was trying to get all these injunctions and all the rest of it. So, he finally, I hesitate to say this, that it was fortuitous, that the old man passed away. So, a lawyer up in Stockton took over, who happens to be a--

LaBerge: You mean the lawyer passed away.

Reilley: The lawyer passed away.

LaBerge: Oh, not Zuckerman! [Laugh]

Reilley: No, no, he kept going to the bitter end, I'll tell you. The old lawyer passed away and a man by the name of Daley, D-A-L-E-Y, took over, who happens to be also a very competent lawyer, a very good litigator. He did quite a bit of condemnation work. But he was a lawyer who didn't want to make a career out of trying this one lawsuit, you know. So we finally got into trial. In the meantime, I've forgotten how we did it, but we got wind that Zuckerman had a surveyor that made a survey of the warehouse to check to see whether it was actually sinking. So, we got hold of this surveyor, found out that his conclusion was that it wasn't sinking at all. So, it is a very nice thing to have in your pocket when Mr. Zuckerman started to moan about how his warehouse was sinking. It was very fortuitous to be able to ask him, "Didn't you hire a gentleman by the name of so-and-so as a surveyor to check this very thing out?" God, you could see the man's face drop.

LaBerge: [laughs]

Reilley: Daley being a good lawyer, he didn't quit. He tried to devise a new theory in the middle of the case that while the thing wasn't sinking it was racking, somehow or another, which the judge didn't really buy. So, we got Mr. Zuckerman's little piece of ground for a relatively modest sum. That old warehouse is there to this day. That was one of the more interesting bits of lore from that experience. We did have a very extensive and longstanding lawsuit involving the contractor on those cases. They claimed that a different soil condition--a lot of other claims, so, it took a long time to eventually settle that lawsuit.

#### Collaboration with Fine EBMUD Engineers

LaBerge: In doing all that, were you constantly talking with your engineers and getting reports, or, how did you know--you knew the law but how did you know what you were talking about as far as the soil was concerned?

Reilley: Well, that is one of the great advantages of working as a lawyer for the East Bay. Engineers and other experts are very very



helpful. They work very closely with you. They're very much part of the team. We not only have the people in the engineering but the land men, the right-of-way men--very helpful. In fact, when you're trying a condemnation case you always have--one of the right-of-way agents would be with you throughout the trial and would be available to go out and get any information--anything you needed. So, you would always have somebody from the right-of-way people, and then if it involved engineering, somebody was assigned to help you. They're very good. As a matter of fact, I should say, about Walter McLean, who just recently lost his wife--his wife just passed away.

LaBerge: Oh, I didn't realize that.

Reilley: Yes, just within the last week. His wife is his second wife. She had worked for the district for many years as secretary in the engineering department, Lila Wagnor.

LaBerge: Oh, I know that name because Mr. Raines talked about her.

Reilley: Ah, yes. She's a very charming woman. And she just passed away. But the first time I ever came to the district, I had only been there a short while, and there was a lawsuit involving the contractors on the sewage disposal, the interceptor lines, which has just been completed, in which they intercepted all the sewage from San Leandro and around and up to Richmond--huge project. And there's some outfit from Los Angeles, Slavonian contractors by the name of Artuchovich, they were making claims against the district, I forgot for what. But I had come over from the public defender's office where all the investigations and anything else you wanted to do you had to do yourself, you know.

So, I remember Walt McLean was--that was the first time I had met Walt--he was in charge of the project. When I called him up and said, "Gee, I guess I'm the one that's supposed to do this, so can I get some information?" God, Walt was up there in a shot. During the course of that same night, he had graphs, and maps, and drawings and experiments--he had more stuff going on. I was flabbergasted because I never realized that people could get so much help without even asking for it, you know. Mac was a tremendous help--it was my introduction to the district--and ever since then I had wonderful assistants.

LaBerge: So, would he, for instance, come with you to the lawsuit, or to negotiations?

Reilley: Oh, yes. On those contract cases Mac, or whoever was in charge of the project, they would sit down and they would be with me.

Unforeseen Conditions in Contracts

LaBerge: How was that particular situation resolved, the interceptor lines?

Reilley: Oh, we settled it. You know, the thing about it is, any major construction case, it's never going to get built precisely the way it's designed because there's always going to be things that come up that nobody can foresee. If both sides are rational, you can always, should always be able to resolve it. Normally, the contractor, they aren't all so bad either. You read in the paper that somebody's a contractor that has overruns or he's demanding additional money. And everybody says, oh, the guy's a crook--

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Reilley: The fact is, as I say, that any large project, just cannot be built precisely the way it's designed because things are going to come up that nobody is going to foresee. In the old days, old-time contractors would basically sit down with engineers who knew them and they would be able to reach a conclusion pretty easily. But as years went on, I think, the contractors would be going to these seminars, you know, to say how to maximize your claims, and so on. In later years, we used to have--they'd almost have a lawyer out there on the site, you know, for big jobs, going over change orders and trying to maximize the amount of the claim. You got so that the engineers and the contractors were dealing at arm's length. Instead of sitting down and trying to work out something rational, they would end up in a lawsuit.

LaBerge: Most of the years you were there, there was more negotiation and then toward the end--

Reilley: Well, I would turn the other way. Initially, we had a lot of old-time engineers who would be familiar with the contractors. We had contractors, like a man named Elmer Friethy, who built a lot of the tanks for the district. He was an old-time contractor who was ready to try to work things out. When he'd come across a problem, the idea wasn't, well, just say, "Well, this is the way to start to maximize my return," he'd say, "Well, how do we work this thing out, how do we build this thing?" The main thing is to get the project completed, and then to try to work out what's fair. I think too sometimes that, the media and the public, you know, they think that whenever the contract doesn't go quite the way it's designed and it costs a little more money that it's somebody's fault. Maybe it isn't anybody's fault. Maybe it's just the way things turned out.

LaBerge: That happens building houses. They never work out the same, you're right.

Reilley: No. And particularly when you're digging big holes in the earth. I mean you're going to come across stuff that nobody anticipated. When the district was building Briones Dam, it had a clause in the contract that said that the contractor would get so much per cubic yard of dirt removed. Well, they got into a--one of the abutments was a different kind of soil than they anticipated. They had to take huge amounts of dirt out of that thing. Well, you know, I mean, somehow or other, they had to make an adjustment in that contract. That's the way it goes. If the people want goodwill, they can sit down and they can move on.

LaBerge: Shall we end there for the day?

Reilley: Sure, let's do that.

LaBerge: That's a good end to the story.





## IV EBMUD BOARD OF DIRECTORS

[Interview 3: January 30, 1996]##

Before the Brown Act of 1959

LaBerge: Well, we were talking about this oral history process and how it brings up memories, but it also fills in the blanks of the written record, and you were telling me your reflections on that.

Reilley: Yes. I think it's often true that even the written record, behind the formal public record, doesn't truly reflect actually what happened, because so much of it may have happened before the public records were made. And, even before correspondence is sent, people have contact with each other, or have relationships with each other that are not reflected in the public records. I would say that was very much true in the earlier days of the district.

The board was quite a homogenous board in those days, when I was there. It changed a little bit later, even before I left. In the critical days that I recall, the Camanche project, and other large projects that pre-dated the American River project, the board was closely knit. Of course, when Mr. [Louis] Breuner was the president of the board, he was the dominant figure.  
[Tape interruption]

LaBerge: When Mr. Breuner was the president of the board, that was in the fifties?

Reilley: Yes, fifties and sixties. And, he was the dominant figure, and pretty much what Mr. Breuner said, the other board members went along with. This was before the Brown Act [1959], which was the secret meeting law. The board used to meet in what was called the executive session. When I first came with the district, we used to meet in a conference room--the district's main offices

were at 16th Street before they sold the building. They would meet there, and they would hash out, pretty much, what was going to be on the agenda, or any other pending matter that they wanted to discuss, so that when they went out into the formal meeting, although it was public meeting, and the public could be heard, the resolutions were already prepared, and they were almost always unanimously adopted, with not too much discussion, and certainly not any open disagreements among the members of the board.

The board members, at that time, were business people, and they viewed the district as being a business entity rather than a political entity. Their role was being directors of a public utility, a business, rather than meeting as a political body and considering matters that came before them in a political context.

As an aside, I should point out that when I was hired, Mr. Breuner took the position that I, as Mr. Raines's assistant, should attend all of the meetings so I would be aware of what we were talking about, what was really district purposes, so I would be prepared to act when Mr. Raines, Hal Raines, was not present. And so I attended all of those meetings, although I was kind of the fly on the wall. I didn't have very much to say, if anything, except when Hal Raines was absent, of course, I would be the attorney that was sitting in on the meetings.

LaBerge: Did you sit at the board table, or did you kind of sit behind?

Reilley: Well, as I say, we originally met, when the district's office was on 16th Street, in a small room, and I would sit alongside of Hal Raines. In the public meeting, I would not sit up there in the front with the board; Hal would sit up there, but I would sit in the audience.

Now, later on, after the district sold its office building on 16th Street, the district used to have these, what they called the Committee of the Whole, which was actually the meeting before the meeting of the board, over at the Athenian Nile Club. We met there for lunch, and we had lunch there, and then we'd come over to the district's offices, and then we'd have the regular formal meeting.

LaBerge: Was there always, even in that building, a regular board room, the way there is today?

Reilley: There was a board room; it was a small room, but it was set aside as the board's room--on 16th Street.

LaBerge: Oh, like today, it's kind of an auditorium. Where did the public sit?

Reilley: As I say, it wasn't very large, but there were seats there for the public, and the board would be seated at a table that was at the front of the room, and the general manager would be seated there, and an attorney would be seated with the board members. Then there would be a secretary of the board who would read off the agenda, and the minutes, and that sort of thing.

LaBerge: Is the secretary appointed?

Reilley: The secretary is an appointed job, appointed by the board.

LaBerge: Okay, but is it a staff position? Does that person work for the district on every other day, just as a regular staff person?

Reilley: Yes. It would not be in the same sense that a member of the board would be. He or she would be an employee of the district.

LaBerge: So the Committee of the Whole was still not an open meeting.

Reilley: That's right.

#### Louis Breuner as President

LaBerge: When did that change?

Reilley: Well, it changed when the Brown Act, public meeting law, was adopted. Then, the board did not meet as a Committee of the Whole--subsequently to Mr. Breuner's leaving the district. I think he died while he was president, I'm not sure of that.<sup>1</sup> But he was succeeded by Bill McNevin who was a Cadillac dealer in Richmond, who was on the board for a number of years. He was not as much of a dominant figure as Mr. Breuner was.

LaBerge: It sounds like Mr. Breuner was dominant the way Governor Pardee was earlier. Did you know Governor Pardee?

Reilley: No, I did not. Yes, I would say that he was a man who had a vision for the district and had the drive to carry it out. He used to spend a considerable amount of time down at the district. They had a little office set up for him, in the new office

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<sup>1</sup>Louis Breuner served on the board of directors from 1950 to 1965.

building down there, and he would meet with John McFarland, who was the general manager, pretty regularly, and the two of them were quite close.

LaBerge: What do you think his greatest contributions were, or happened during his presidency?

Reilley: Well, I think the biggest thing a board can do, is once they make a decision, as far as policy is concerned, they are consistent in backing up the staff in carrying out that policy. One of the worst things that can happen--to the staff--is to be unsure just what it is that the board wants them to do. Or, if they keep changing their mind, or they flip-flop on things, it's very disturbing, and causes a great deal of chaos, as far as the management of the district is concerned. When Mr. Breuner had adopted something, or with the board's action when he was there, you knew that you went ahead, and you got into trouble because of the policy, not because of your actions. Because people disagreed with the policy, you knew you weren't going to have the rug pulled out from under you. He was going to support you.

I would say, he was a man of vigor and of intelligence. He would listen to what the staff wanted to do. Of course, he wouldn't always agree with that, but when he was sold on it, then you knew that that was going to be the policy of the district.

LaBerge: You gave me an example, a while ago, how he backed you up in court sometime.

Reilley: [chuckle] Yes. We embarked, shortly after I came here, with a program called the Ten-Year Expansion Program, which entailed a great many projects. Among them, of course, was the Camanche project, and the Briones Dam and Reservoir. But it also included a large number of smaller projects--tanks, water tanks, and that sort of thing, which entailed the acquisition of quite a bit of property.

I pretty much was assigned the duty of working with the land division, and acquiring those properties, and carrying out the legal aspects of it, including any eminent domain, or condemnation suits that were required.

One of them was to acquire a filter plant site out in the Castro Valley. We were in the middle of the trial. We started out the trial, and the judge, in that case, was so unfair, and in my view at least, so biased in the way he was handling the case, that I asked--at the recess, I had a conference with the judge, and asked him to bring in the court reporter, and I told him that I was very upset with the way he was handling the case.



LaBerge: Was the issue eminent domain, or what was the issue?

Reilley: Yes. It was acquiring of the property. I told them that I was so upset, that I thought that he was unfair, and that I would want to challenge his presiding--unless there was a change in it. I felt that he should excuse himself from the case. Well, he got very upset by that, to say the least. So at the end of the day, I went back to the district's office down on Adeline Street. When I got back, there was a note there from the secretary saying that Mr. Breuner wanted to see me. I said fine, she called down to the office where he was, and he said he'd come right up. And I thought, I'm going to catch it; but he came up, and he said, "I just got a call from a judge down in...."

I forgot the man's name now, he was an old-time member of the local establishment, and well known to Mr. Breuner. I guess he was of a family that had been prominent in town. And Mr. Breuner asked me, "What happened?" So I told him. He looked at me, and he said, "Yeah, that SOB never was worth anything anyway." [chuckles] And he turned around and walked out of the office. I never heard another word out of him.

I hadn't been at the district all that long, and when I heard that, of course, that made me feel that I was going to be backed up if I was in the right.

LaBerge: So did the judge excuse himself?

Reilley: No, he didn't, but he calmed down. His attitude was completely different throughout the remainder the trial. Kind of, well, frankly, he was wrong, and he was being unfair.

#### After the Brown Act

LaBerge: Back to the issue of the board meetings. How did it change once the Brown Act came into effect? They must have had to organize themselves somehow before the meeting, or what happened?

Reilley: Well, I have an idea that Mr. Breuner would contact different members of the board, and discuss it with them, and they would have meetings of less than the whole board from time to time, in which they would discuss things. Of course, I don't know whether Mr. Breuner contacted them or not because I'm not privy to that, but I'm sure that he had some contact with them. But they gradually discussed things more openly in the board, once those secret meeting laws, so-called, went into effect.



Then in later years, of course, they had [pensive pause] other views on the board. They had a director by the name of Helen Burke who was elected from Berkeley, that ward of course, a member of the Sierra Club, was pretty much away from the main-stream of the board, and, of course, Mr. Breuner was long gone by that time. We had several changes in the presidency before that.

LaBerge: What other board members were memorable besides Mr. Breuner? I have a few names down that I just picked up, but I don't know which ones you'd pick. I have Mr. McNevin, Sanford Skaggs--

Reilley: Yes. Skaggs was the president of the board at the end, when I left. Skaggs was a young man, an attorney out here--well, relatively young. But he was another very competent and able president.

LaBerge: In your opinion, what do you see as the purpose and the function of a board of directors?

Reilley: Well, it's interesting because the aspects of the board of directors have changed a lot since I was there. It changed while I was there, but that was in later years. As I say, initially, the board viewed itself as a board, somewhat the same as a board of directors of a business, and its purpose was to achieve efficiency at a reasonable cost, and deliver a reliable product. It didn't view itself, the board didn't, as politicians. You know, as in any business a certain amount of politics enters, but basically, they viewed themselves as being businessmen, and they didn't view themselves as being politicians who were running for office.

Originally the board was elected at large throughout the district, and not elected from a ward, a geographic territory, representing a certain number of voters. They were voted on in the entire district. Originally, when I was there, there were only five members of the board, later it was increased to seven. They didn't necessarily have to be political, because voting at large, it would have been very difficult for anybody to oppose them. So when any board member died or resigned the existing board could select a successor, who would then run at the next election as an incumbent. So to some degree it was a self-perpetuating body.

In later years, of course, it's become more and more a political body, moved by political causes of various kinds, and the members of the board have become very much more politicized. In one way, that has been dictated by the people who are on the board, and it also is, I think, dictated by the reality of what's going on in the world because people in the world have become

more and more environmentally conscious than they were in years past. So, issues such as water and growth and that sort of thing, have become more and more critical to the public at large, so that they view an entity, such as the district, not just as a supplier of a product, but as a contributor to the well-being of the community as a whole. I think, for that reason, as well as the politicizing of the board member, it's a different type of entity than it was in the earlier days.

### Change in Election Procedures and Board's Vision

LaBerge: Did part of this start when the change came to voting by wards rather than at large?

Reilley: Yes, I think that had a lot to do with it. There was a conjunction of two things at once. There was this ward election thing, and at the same time, a greater interest in the public, or at least, the environmentally-interested part of the public, in how the district functioned. So you had a convergence of those two factors.

LaBerge: I read that there was one point where both Mr. Breuner and Hal [Harold] Saunders were opposed in an election, and they handily won. This was 1958. But it was sort of the first incidence of politics coming in to the elections.

Reilley: Yes. Of course, there again, the people on the board were elected by the district as a whole. So it was extremely difficult for any outsider to run because you had to convince such a large body of people--voters--of who you were that, as a practical matter, people tended to vote for the incumbents. Basically, the idea is, if I haven't heard anything bad about the thing, and the place seems to be running okay, [chuckle] you know, I'm going to vote for the person who was in there.

LaBerge: I think that most of the population does that with judges, whoever's the incumbent.

Reilley: Right, sure.

LaBerge: Yes, I think that's probably it. I know that Walter McLean was on the board later.<sup>1</sup>

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<sup>1</sup>Walter McLean served on the board from 1979 to 1990.

Reilley: Yes.

LaBerge: I wonder, what is that like, to have a former employee then as a member of the board? Could you see that as being helpful to the board?

Reilley: Well, I think it can be, particularly, if it's someone who has a background in engineering, for example, or management, it can very helpful.

LaBerge: I could see, just from the board meeting that I attended, that supposedly none of those people have engineering backgrounds. I mean, they really would have to study the issues a lot to know how to vote, and how to help direct the policy.

Reilley: As I say, I think that, if you were to judge things on a spectrum, initially you'd have the board as a group of business people, and then, who were interested in running a utility, and then as we got going further and further away from that, to the present time, I would say, it is more of a political body. And, when you have that, you have a board which is looking more towards how is this going to affect votes than how is this going to affect the operation of this as a public utility. I don't say that those are always in conflict, but when they are, which side of the fence does the director come down on? And I think, when you have more of a political body, he or she is going to come down on the side of what's going to get me elected.

LaBerge: How does the change in the board affect staff? Did you see that through the years, or not?

Reilley: Yes. You do see it through the years. You see a less risk-taking group of employees because they're not sure whether they're going to be supported in what they are doing. They'll find themselves undercut, not because what they did is faulty or wrong, but because it has offended a certain group of people in the community.

LaBerge: But you always felt supported. I mean, for instance, I know you did by Mr. Breuner, but from then on did you feel supported?

Reilley: Yes, I did, because the board had not totally changed. There were some voices of change on the board. Helen Burke, of course, as I've mentioned, and there was a director elected from Richmond area, Jack Hill, who beat Bill Moses who was on the board, who was a lawyer, who was a good director. Those two were a minority, and so, they didn't move the district's policies in any way, and I should add that I--

A Sample of Board Meeting Issues##

LaBerge: Tell me some of the issues that would come up for you at board meetings.

Reilley: Well, they're really quite varied, as you probably knew from your own experience attending the board meeting, that they cover quite a spectrum.

LaBerge: Oh, they do. Actually, at this one that I went to, the attorney never had to say anything. But I imagined, it just didn't happen to come up, they didn't have a question for him.

Reilley: Right. We had a number of issues concerning water rates when I was there, when I was the attorney. The district, at the time, had passed its big bond issue, for its water expansion plan, and committed itself to the public that it would not raise water rates as a result of that bond issue. At that time, I think, it was touted to be the largest single bond issue for a water system in the West. It was \$258 million, which apparently is not that big a sum these days, but then it was. They had committed themselves not to raise water rates. For ten years they never raised water rates.

But when I became the attorney of the district, that ten years was up, and they had to decide how to configure a rate schedule that would raise revenue, and at the same time to be fair to the public. So there was a good deal of this wrangling over that. I had the job of casting the rates schedule into a form as it would be adopted, so I had a lot of work with that.

Labor and Contract Disputes

Reilley: Then of course, we have labor problems. When Mr. Breuner was there, of course, the district's employees were not unionized. Later the unions took over the employees' organization, and particularly the blue-collar workers--so-called blue-collar workers--were pretty militant, and they went on strike when Bob Nahas took over--was the president of the board at that time. Bob Nahas was a very active, able president of the board, and later, of course, was the leading figure in having the Coliseum built in Alameda County.

LaBerge: Oh, I didn't realize that.



Reilley: Oakland-Alameda County Coliseum. He was the president of that board, at that time, I believe. He was a developer, and put together quite a few large projects.

LaBerge: So, was this the first strike? I have a date of 1968 for one of the first strikes after the local came in.

Reilley: Yes. That sounds fairly right. We had a couple of them there. I was the attorney in '66. So that sounds about right. And, they went out on strike then, and then, we had another strike later on--trying to figure what the date was of that. But we had two strikes when I was there. Then of course, later, after the first strike, the so-called white-collar employees formed a union, and they, of course, were bargaining collectively with the district as well. That, of course, presented a lot of interesting problems of how to resolve those things. We hired a firm of negotiators to negotiate with the strikers in both instances.

LaBerge: Whom did you hire?

Reilley: I'm trying to think of the name. There were two different firms. One of them was Corbett and Kane.

LaBerge: But they were labor attorneys?

Reilley: Yes. They did the actual negotiating although we had to put together the formal response of the district.

#### Various Duties of the EBMUD Attorney, 1966-1982

LaBerge: Are you the one who would write the contract, or did--

Reilley: Yes. We wrote all the contracts for the district. Then, large projects, of course, we would review the specifications, which would be put out for bid so that we would review those, and then in the course of the construction work, we would handle any disputes that arose. If there was any litigation at the end, we would need to negotiate the settlement of those, or else actually try the case.

We, of course, had some large construction disputes that would arise from time to time. We also handled the Special District #1, the sewer disposal projects. They had some large projects that they undertook because it was required under the Federal Clean Water Act [1970], so that they had to raise the

level of sewage disposal cleanup to meet those standards. The district passed a bond issue that, I think, was a sixty-million-dollar bond issue, to cover those projects.

We had an initial project which arose out of that federal requirement. We were trying to figure out what the project was because the requirement was fairly general, and how it was to be met was not entirely clear, but we had to get the bond issue on the ballot because there was some requirement. I think there was a provision in the election code that required us to act within a very short period of time, within a week or two, to get the thing drawn up, and get on the ballot. We used to, of course, handle the election procedures as well, although we also had a bond counsel who would put together the necessary bond papers.

LaBerge: But, you were kind of orchestrating all these people, the bond counsel, the labor counsel?

Reilley: Right. We had the responsibility of coordinating, let's say. The Special District was getting prepared to carry out this large project, and it wasn't exactly clear as to how we would fix it as to a sum of money. I remember going over with the treasurer to Treasure Island, and we were sitting down trying to figure out what it would be, so we kind of estimated it on a piece of paper, and then we said, well, we'll just add a little, maybe a few million more. [laughs] We arrived at a number; I think it was sixty million. Then we had a resolution, an ordinance for the election which had to be in very general terms because nobody knew for sure what it was going to be. It might extend over a period of time; there might have been an incremental project. So, I remember--

LaBerge: Who was the treasurer? Do you remember?

Reilley: Oh, let's see now. Well, I'll think of it. Nate Sindelar.

#### Bob Kahn and the "Friendly" Suit

Reilley: But there was some difficulty because, when we built this first part of the project, we had a considerable amount of money left over. Then when we were going to build some further improvements, which were necessitated--I think it was Bob Kahn--who was, as I mentioned before, kind of the gadfly of the district--came in before the board--

LaBerge: This man is a journalist, is that right?



Reilley: Well, he's actually, his dad was the Kahn of Kahn's Department Store. So he's kind of a consultant on merchandizing and retailing, and has a sideline as a journalist, if you can call him that, for *The Montclarion*, and had a column there which was quite a problem. The column loved to take on the district, so he came before the board, and said, "Well, you can't do this because there was no authorization, you've already used the money for the initial project, you can't use it for the second project because it isn't described in the ordinance." So they looked to me, of course, for the answer to that. I told them I thought Bob Kahn was totally wrong, and that we could certainly use some money for that. So Bob Kahn, actually, was going to try to block the project. Of course, the board was in great furor over that. So, we arranged a suit where the treasurer would refuse to issue the money for the election. We would then sue the treasurer to have him required to release the funds, and--

LaBerge: Is this so you could get a ruling on whether you could--

Reilley: Right, exactly. It was kind of a friendly suit. So, we hired another lawyer to represent the treasurer, and then we got a ruling from the District Court of Appeal that, indeed, we could use the money for that purpose, and then the project would be issued money, and use the bonds. But, that was an interesting little episode.

LaBerge: Well, in that case, would you be the one defending the district? Did you present the case, or did you hire someone?

Reilley: Actually, we had the bond counsel do it. George Harrington of the Orrick firm was our bond counsel.

LaBerge: Did Bob Kahn come in and testify?

Reilley: No, but he cooperated, of course, with the attorney we hired, Robert Anderson. The interesting part of it was that we hired this attorney to represent the treasurer, and this attorney became convinced that the treasurer was right [laughs] and we were wrong, and he really put up a tremendous opposition to our case, or our so-called, "friendly" lawsuit.

LaBerge: So you remember about what year this was?

Reilley: I can't think of it now, but I think it must have been around in the seventies.

LaBerge: You were talking about Bob Kahn another time, and I don't know if it had to do with something else, about him writing an article in *The Montclarion*?

Reilley: Oh, yes, he was perpetually--he zeroed in on me for quite a bit, for some reason he used to refer to me as the "Great Jack Reilley" in his column, so you can gather from that he didn't have a very warm regard for me.

### The Drought of 1976-1977

Reilley: Of course, one of the great events of my time was the drought of '76, '77. The district had to set a plan to ration water, in effect. So the district hit upon a scheme of not trying to go out and police people's water; instead they would have certain parts of the ordinance: Thou shalt not water your lawn, or let water run into the gutter, or wash your car, or a lot of other things like that. But rather than try to police it, they set up a plan of having higher and higher water rates for excess use of the water.

The scheme was that people would police themselves because of the, we could almost say, punitive nature of the rates at higher usage, and then with the maximum amount, that if they went over that, on the assumption that somebody might not care how much they had to pay because they wanted to water their orchids or something, then they would have a possibility of a cut off. They had, kind of, a fixture they put on the meter that would cut down the amount, the amount of water that could go through the meter.

So Bob Kahn, in one of his columns, asserted that I had approved the excessive use of water without a penalty for some water user out in Contra Costa County.

LaBerge: It sounds a little bit like the problem today with people in Contra Costa County and higher rates.

Reilley: Yes. That was a tremendous problem--how to fix a rate that would do this self-policing that we were talking about. Do you say, well, everybody that uses 50 percent, for example, more than what they used last year at this time, will pay X dollars, or whatever? Or do you say, there is a fixed amount of water that can be used, and beyond that, you're going to have to pay double rates, or whatever?

Well now, if you take the Contra Costa people who have, say, an acre of land, and you say any use of water in excess of what they used last year, maybe last year they used ten times what a householder in Oakland, for example, would use. And they might

say, well, we're certainly within our usage, or maybe, we're using half of what we used last year. Well, that still might be a great deal more water than the person in Oakland.

So they had public meetings on this thing, and there was a lot of heated discussions by the people because the people here in Contra Costa were arguing just like they're arguing now, that they have these large properties, it's a lot hotter out here, and they just necessarily need more water. Then we have the people who were talking about equal right, you know, let's not pamper the rich. Just because they're able to have these big estates, why should they have ten times as much water as I'm having here because I've got to wash diapers, and you know.

LaBerge: Right.

Reilley: And so, there was a great tugging and hauling before the board as to what they would do about this thing. Finally they decided on a fixed amount of water. This probably still rankles people out here. They had all kinds of people trying, you know, to work all kinds of exceptions, and I've got horses, you know, and all the rest. So they set up a scheme, nonetheless, to have a fixed amount of water, and then anything over that gradually went up to this rather exorbitant price for water.

Kahn, for some reason, I don't know how he ever got it in his head, said that I had cleared it for somebody out here to get water and not have to pay this excess charge. Well, that was a total, absolute, falsehood. On the contrary, I had stated, when asked, that the district had a perfect right to enforce these rates.

LaBerge: Did you even know the name of the person he accused you of okaying it for?

Reilley: No, I've forgotten now. I'm not sure he did mention it. Although we had a lawyer in Oakland, who lived out here, who did refuse to pay, and we took him into court, and collected. Now that might have been the case, I'm not sure. But in any case, he wrote this article about the "Great Jack Reilley," in which, among the things he said was that, not only had I done this, but this verged on the criminal. Well, of course, he put his foot in it there because you can make opinions, and public figures you can malign if you want, but you can't accuse them of being a crook, you know, unless you're able to prove it.

I wrote, of course, a letter to the publisher of *The Montclarion* telling them that they'd better retract it under a provision of the code, in writing, because it was a reckless

disregard of truth. So interestingly enough, *The Montclarion* publisher did retract, published my letter along with it, and Bob Kahn disappeared as the columnist for *The Montclarion*. Whether he quit because he was repudiated, or whether they fired him, I never knew, but at least, he was out of *The Montclarion*.

LaBerge: Was this after *The New York Times* case [*New York Times Company v. Sullivan*, 1964]?

Reilley: I think so, yes.

LaBerge: So you had case law to back you up.

Reilley: Right, so that you can make fair comment, but a willful and malicious disregard of the truth is not a protected journalism.

LaBerge: We aren't really skipping around because things keep leading to the other. Talking about that drought of '76-'77, one of the oral histories we have is of Ronald Robie, who was director of water resources.<sup>1</sup>

Reilley: Yes, I know him very well.

LaBerge: Well, he was discussing this. What relationship, for instance, did you have with the Department of Water Resources, or with him? And, during that drought, it sounded like the governor got together a task force just on that issue.

Reilley: Yes, they did. Of course, it was a very serious issue. If it continued one more year, they would have been in very serious trouble. There were tentative plans to fill up the water mains with salt water for fire protection and deliver the drinking water in by water trucks. That of course, was very tentative, but it was a very serious thing--we, of course, were a big player in that.

We had relationships with the state, also with the federal Bureau of Reclamation because we had our American River contract at that time. So we could take, theoretically--but the Bureau of Reclamation could have held us to the contract because one of the terms of that contract is that we'll take the water from a place, Grant Line Road, which is on the Folsom South Canal, although the contract itself does not specify where the water is going to come from.

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<sup>1</sup>See Ronald B. Robie, "The State Department of Water Resources, 1975-1983," The Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1989.



It says it's to be supplied by the Central Valley Water Project. But we had a place where we could take the water at that time, from a pumping plant at what is called Bixler, in the Delta. And we wanted to negotiate with the bureau so they would let us take water from Bixler and pump it from there during that drought, which we eventually, got the agreement to do it.

We also then entered into agreement with Marin [County], by which we put a pipeline across the Richmond-San Rafael Bridge. We, in turn, would take water from the state project out at Hayward. The state would let water come to us, and we would run it through the system. It was theoretical that water was going across the bridge to Marin County because, of course, it wasn't, and the water was coming in from the state and the district was using that water, and the theory of it was that it replaced other water that we sent across the bridge to Marin County. So that pipeline was built in record time to provide water to Marin.

We also provided water to Contra Costa County Water District and then we took water from the state down at Hayward. All those agreements had to be worked out. And they had to be done in a way that, somehow or other, we figured out what we were going to charge people, and to be sure that it wasn't established as a permanent thing because you didn't want to be running that kind of water into your system when you're bringing water down from the Sierra, and not mixing Delta water with it.

#### Relationship with Department of Water Resources##

LaBerge: Okay. We were talking about the '76-'77 drought and the various agreements that you entered into. Is the Department of Water Resources one of the agencies that you dealt with?

Reilley: Yes, it was.

LaBerge: Tell me about your relationship with Ron Robie.

Reilley: Generally, they were pretty good, up to a point where we had gotten involved in the American River Project. Robie was very, very unhelpful to us in that dispute. In fact--[tape interruption]

The lawsuit was filed by the American River people, and by EDF [Environmental Defense Fund]. When it went up to the supreme court, the state supreme court, Robie filed a letter with the clerk in which he allowed as how the district's taking the water

from the American River was not a reasonable use, and in fact, was an unreasonable use of water.

I was outraged by that because here was somebody in his role, as the state water director, filing something, in effect testifying, before the appellate court, without appearing, and expecting the court to take cognizance of that, without him being a witness. If he wanted to testify he should have come into court and subjected himself to cross-examination. But to use his position on appeal to expect the court to take cognizance of that, what in effect was testimony by him, was outrageous.

I wrote a letter to the court saying that, and Robie wrote to our board of directors protesting my action in the court, and wanting them, in effect, to censor me. I have never forgiven him for that to this day. I thought that was a cheap shot from somebody who I thought was, at least, on friendly terms with me. The board, of course, didn't censor me. They said, well--I think Bill McNevin was the president at that time. He turned the letter over to me and said, "You write the answer to the letter," which I did write. I must say that I exercised considerable restraint in answering that letter because I really didn't say what I really felt, which was that this was an outrageous act. Robie is now a judge up in Sacramento.

LaBerge: That's right. We're going to come back to this whole issue, too, of the American River next time.

Reilley: That was, of course, almost two years of negotiation before we signed that contract. There was also a side agreement which we had to reach with the people, with the so-called [Central Valley] East Side [Project] people. They originally were protesting our taking water from that project because they said, it would in effect be used, or could be used further down the Valley for the so-called East Side Project. We eventually worked that out. And, we had a little dust up, too, with Contra Costa County Water District. They originally took the view that we might be taking the water from the Delta, which would be otherwise available to them. But we worked that out, too. We also had to work out an agreement with the Sacramento River Water Users Association.

#### More on Board Members

LaBerge: Well, back to the board, where we originally started. Do you have any anecdotes about other board members, or some of the best that you've known besides Mr. Breuner, for instance?



Reilley: Well, I thought Sandy Skaggs was a good caretaker. And of course, Bob Nahas was an excellent president of the board.

We had a president of the board named Hitchcock, who is now deceased, who was a very volatile man. The only thing I remember about him particularly was that he would tend to blow up at the board meeting. But otherwise I think he was a fairly competent person.

We had another director named [Harold] Saunders. I don't remember whether I mentioned this or not, but Saunders was an interesting guy. He was a businessman, and manager of an oxygen plant, I think, in Emeryville. He was an official in college football games. He was out at--Berkeley, particularly in those days, was the leading football place. There wasn't any pro-football, at that time. He was a college football official. My only real memory of him is that I was sitting in the Committee of the Whole meeting--

LaBerge: Oh, I was going to ask you, you attended those?

Reilley: Yes, I did. And Hal Raines was away. I hadn't been with the district only a few years, maybe three or four, I guess. But I remember, we were down on Adeline Street, we moved out of 16th Street--and out of the blue, I'm sitting there next to Saunders, and he turns to me, and he says, "I just want you to know, I don't like lawyers!" [laughter] You know, I was absolutely flabbergasted. You know, sitting in there for Raines, I'm a young lawyer, and here is some member of the board turning to me, and telling me, "I don't like lawyers." What do you say to that? I don't think I said anything; my mouth, I guess, just kind of flopped open. But that was an extraordinary experience, I've never forgotten that one. This man took that occasion to tell me he didn't like lawyers. I noticed he didn't say it when Raines was there.

Of course, there were other directors, like Mr. [Thomas S.] Neilsen, who ran a steel plant down in Albany, I think it was, or in Berkeley. He was probably one of the nicest men that I've known. He was a very kind, considerate man. And we had another director named Howard Robinson, who was also a great gentleman. He was a very kind man. These men were generally there during Louis Breuner's reign, and they were not, what I would call forceful directors, but they were competent people.

And later on we had DeWitt Krueger. His business was tax analysis of big companies that wanted them to review mostly their real property taxes, and local and state taxes. His basic philosophy, I think, was that any public employee was probably

getting money under false pretenses. DeWitt Krueger was a man who, constitutionally, was opposed to anybody getting a raise in pay.

LaBerge: Has there always been a lot of public comment at the board meetings?

Reilley: No, there--well, that's true in recent years, as I say, as the character of the board, and the character of the public's view of what a water district ought to be doing has changed. But there was still--in my day, there was quite a bit of comment in the later years. One of the big things that people opposed in that day was, I think I mentioned it, the location of tanks. There was kind of an antipathy towards having a tank perched up on a hillside. Well, of course, gravity being what it is, that's the way water gets delivered. Tanks, generally, get put up on hillsides, so that was one of the things that we've had people come in before the board and protest.

LaBerge: I think we'll just wrap this up now, and next time we'll talk about the American River and management, which we didn't really talk about, and other things that you did when you were an attorney..

LaBerge: Sure.

#### Succeeding Hal Raines as General Counsel, 1966

[Interview 4: February 28, 1996]##

LaBerge: Okay, last time when we met, we were still talking about what you did when Mr. Raines was there. But then we launched a little into what you did as general counsel--chief counsel--what was the title?

Reilley: General counsel.

LaBerge: General counsel--because I asked you about Ron Robie, and you told me a few anecdotes about Ron Robie. But let's just start with how it occurred that you got the job when Mr. Raines left.

Reilley: Well, I had been with the district, you know, since 1951, and I was Hal's principal assistant. During the Camanche acquisitions, of course, I was in charge of all of the litigation to acquire the property. I, basically, was the chief assistant to him, and I anticipated [chuckle] that I would be appointed upon his

retirement, although I had not heard anything. At some point before his retirement I talked to Hal and pointed out to him that I would like to succeed him, and if they had some other ideas, I'd like to know that because I'd like to go somewhere else. He assured me, as far as he was concerned, he would recommend that I succeed him. I think he talked to the management, and they were amenable to that.

So that upon his retirement, why, I was appointed to be the --at that time, the job was known as the "attorney for the district." In the East Bay Municipal Utility District Act it doesn't speak about a general counsel. There is provided an attorney for the district, and sets forth in general terms what his duties shall be, and provides, of course, another section for the appointments of assistants to the officers of the district, the attorney being one.

I always thought it was rather awkward to call one of the other attorneys in the district, an assistant attorney. It gives the impression that you're kind of a paralegal, or you know, not quite a lawyer.

LaBerge: Right, "in training." [chuckle]

Reilley: So when I took over the job, it would be appropriate to change the titles, although the basic title of the general counsel under the act is attorney, but with the title of general counsel. Then, the other attorneys would be attorneys, or in one case, the assistant general counsel. So from that time on, the attorney's position has been entitled "general counsel."

LaBerge: Did you have to go to the board, or change the by-laws, or something to get that--

Reilley: No, I didn't. They just did that in the resolution of the board appointing me as attorney. It was described as being the general counsel.

LaBerge: That fits more with corporations.

Reilley: Yes, it does. It's more in accord with the way positions are established within private corporations, and in some public utilities--publicly-owned utilities. I believe, subsequent to that, that in the Sacramento Municipal Utility District, which is formed under the same act, they followed suit and named their attorney general counsel, also.

LaBerge: Is this the 1921 act that are talking about?

Reilley: Yes, it's the original act of the district [Municipal Utility District Act, 1921]. It's never been changed in that regard.

### Reporting to the Board

LaBerge: How did your duties change once you became general counsel?

Reilley: Well, of course, I think the attorney, or the general counsel, of the district has a more intimate role with the board. You are the advisor to the management, and to the board, so that a good part of your job becomes more connected with advice, and administration of the district, so that you become a, kind of, overall advisor, at least as far as the law is concerned. Whereas before, I think, I was concerned more with the nuts and bolts of being a lawyer for the district.

LaBerge: Who do you actually report to?

Reilley: We report, the general counsel reports to the board.

LaBerge: Okay, not to the general manager?

Reilley: No, we do not, and the reason for that is--that's been debated--but the general thought behind that is that you might have to advise the board in some manner which would be contrary to what the general manager is recommending, for legal reasons. You might be constrained to do that because if the general manager was, in effect, your client, you would have a kind of attorney-client relationship with the general manager, and you might be restrained from taking a position adverse to him as far as the board was concerned, even though, you knew that it was a questionable action.

LaBerge: That makes sense. So you're actually hired by the board.

Reilley: Yes. Of course, as a practical matter, you have a very close relationship with the general manager, and it would be pretty impractical if you were at odds with each other. So that did not occur actually.

LaBerge: I guess, it would make the working relationship not very pleasant.

Reilley: No, it would be very difficult to do that.

LaBerge: So, you never had to advise something differently than what the general manager was--

Reilley: No, I never really had a situation where the general manager was taking a position, and I had to go to the board, and say that that was not a legal action. That did not occur.



## V AMERICAN RIVER PROJECT, 1968-1990

### Background

LaBerge: I know the main thing that you worked on, during that time, was the American River controversy. So, why don't you tell me how that come about? The first date I have is 1968, when the board authorized signing a contract, but I'm sure something happened before 1968.

Reilley: Yes, there's a lot happened before that. The district's staff, and engineering from well before that, several years before that, were in the process of investigating a long-range solution to the water supplies of the East Bay. They concluded that the Mokelumne would not satisfy the ultimate needs of the area, that they had pretty well exhausted the water rights that the district was going to be able to accomplish from the Mokelumne River. So, they started to look, almost right after the Camanche project was finished, to explore possible future water supplies, and they explored many of them.

Probably, you have heard from Walter McLean, who was, as you know, an engineer for the district, how they explored those possibilities. A man named Francis Blanchard was the--[tape interruption]--the engineer who was in charge of water resources planning. He, of course, along with the consultants that were hired by the district--they had Harvey Banks who, as you know, was at one time the predecessor of the Water--

LaBerge: Department of Water Resources?

Reilley: It changed several times, so I was trying to think of the progression there, but he was in charge, and Bill Gianelli, who



was also with the state, and was a consultant on water matters.<sup>1</sup> He, Bill Gianelli, and a man named [Norm] Murray, who was a partner of Bill Gianelli. All of them were of assistance to the district in the sense of helping them with their planning. The staff and the consultants presented many possibilities. We were being wooed, at that time, by the State Water Project, who were looking for customers. This is one of the reasons why the state always, I think, was opposed to the district's going to the American River because they viewed the East Bay as one of their potential customers for the State Water Project.

Of course, the district, ultimately, determined that going to the American River was the preferable project for the district. Primarily, I think, well, I know, was because the American River provided a better quality of water. The State Water Project contemplated taking water out of the Delta, and the East Bay felt and believed that to do so would degrade the quality that the district had because its original purpose in going to the Mokelumne River was to have a pure mountain, snow-melt, source of water, and it would provide the highest quality of water for the East Bay. It felt that the American River was the closest available project that would provide a water quality comparable to the Mokelumne supply.

But this did not sit well for the state people and I think dating back to that time, there was lots of opposition to the district development. In fact, I know there was.

LaBerge: Who were the people involved with the State Water Project then?

Reilley: I'm trying to think of a--I think, there was a man named Charlie McCulloch, if I'm not mistaken, who was one of those who was quite adamant in his opposition. And Bill Warne who was the president, the chairman of the water board, I guess, it was the state water board, at that time.

LaBerge: In fact, we have an oral history with him, and I looked through a part of it.<sup>2</sup> He said something about that the East Bay didn't want the State Water Project, both because of the quality, but also the cost? Was it more costly?

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<sup>1</sup>Both Harvey Banks and William Gianelli held the position of Director, Department of Water Resources, at different times.

<sup>2</sup>William E. Warne, "Administration of the Department of Water Resources, 1961-1966" in *California Water Issues, 1950-1966*, The Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1981.

Reilley: I don't think so. If anything, I think it was probably cheaper. But it was--primarily, I would think, that it's simply a question of water quality.

#### Negotiations with the U.S. Bureau of Reclamation

LaBerge: When did you get involved in the negotiations?

Reilley: Well, it was almost immediately after I took over in 1966. I participated in those negotiations. We negotiated with the [United States] Bureau of Reclamation after the district's engineers and the board made the decision to go to the American River.

Then the question was, well, you have to start dealing with the Bureau of Reclamation. Intertwined with that was the question of building the Auburn Dam. Although the district's water right, or contract right rather, with the Bureau of Reclamation is not dependent upon the building of the Auburn Dam, the availability of the water was [pensive pause] contemplated, at least, to arise out of the building of the Auburn Dam on the American River, and which would enhance the supply of water available to the bureau, to sell.

At that time, the bureau contemplated building Auburn Dam, constructing a Folsom South Canal, and then hooking on to the end of the Folsom South Canal, after it got down into San Joaquin County, to what they call the East Side Project, which would go down the east side of the great Valley--the Central Valley. And then also construct what was then known as the hood clay relief, which would be across from the Sacramento River over to the Folsom South Canal, to send additional water which would be available down to the East Side Project.

When we got into that picture of getting water from the American River, we had a number of different people. The people on the East Side Project down there, the people on the Sacramento River, and then, of course, the people of the American River, who all had conflicting interests, or possible conflicting interests. They were opposed to the district's getting water from the American River if it would impinge upon them ultimately getting the water supply.

So in the meantime, the district was negotiating with the Bureau of Reclamation to get a contract. At the same time we were trying to arrive at some conclusion as far as these other

competing parties were concerned. It was complicated by the fact that the Bureau of Reclamation, at that time, was trying to arrive at a new pricing structure for its water supply, that had originally a forty-year program in which they would set a fixed price, and you would have that water for forty years.

Well, there was a great deal of discussion, not only locally, but generally in the Congress, I guess, that that was not a very economical way for the United States to dispose of its water. As prices and costs went up, they ought to be able to adjust their price. Their solution to that originally was to say, well, we will set a price, but then it shall be adjusted as the secretary of the interior shall decide. Well, you know, if you're signing something like that, that's like saying, I will pay Visa X dollars, and then whatever the Bank of America decides I shall owe in the future. That doesn't--

LaBerge: Right, 20 percent, whatever!

Reilley: Whatever, you know. So that didn't seem to be very satisfactory from the district's standpoint, but how to do this, plus the fact that we recognized that it was fair that prices should be adjusted to meet future increases in cost. There were a couple of components. First was the cost of the production of the water itself, which wouldn't vary too much because the project would be built, and that would be fixed. But the operation of the canal might vary quite a bit, and it would vary dependent on how many people were available to pay for it.

In other words, how successful was the United States going to be in marketing the water. And if we were the only ones taking water from the canal, would we have to pay for the entire cost of the canal, which didn't seem to be very satisfactory from our standpoint. So between those two poles, the United States wanting to assure that the project would be paid for, and our desire that we didn't pay any more than what we were obligated to pay because of what we were getting.

#### Trips to Washington

Reilley: So arriving at a formula for that, based on our use and so on, took a great deal of struggle. And because the people locally from the bureau would negotiate with you--and we would go up to Sacramento mostly, occasionally they would come down to Oakland--we would arrive at something that we thought to be sensible, and

they would say, "Well, yeah, okay, that's fine, we'll have to send this back to Washington." Well, maybe two or three months would go by, and nothing, we wouldn't hear anything, so that there was a great deal of time lag there because of the inertia, or whatever it is, that comes with trying to deal with [the office] three thousand miles away.

Of course, in the meantime, there was a question of getting the Auburn Dam built, and that was lurking out there. We would go back to Washington. The general manager at that time was Jack Harnett, and we would make our little spiel, and rattle our tambourines for the committee of the Congress that would be acting on this.

LaBerge: What committee was it? Do you remember?

Reilley: Well, I think it was something connected with Interior. I can't remember exactly. It would be some subcommittee. Interestingly enough, we had almost no interest of our own congressmen here; for some reason, you know, they just assumed you turned on the tap and water came out, and they were interested in a lot of other subjects, and they didn't really pay an awful lot of attention to building water projects up in the Sierra.

LaBerge: Who were the congressmen then?

Reilley: Well, [Jeffrey] Cohelan, at that time, was the congressman. The one congressman that we got a fairly good hearing from was from up-county, Bizz Johnson, who was a congressman then from that part of the world, up in the central part of the state. He, of course, was interested in the construction of Auburn Dam. So we got good cooperation from him.

LaBerge: Were you doing this as a friend to the bureau, to talk to the committee, or on your own?

Reilley: No, because we were interested in getting the water supply too, because it would firm up the supply, and make it more--and the wisdom of that now is pretty evident, because the bureau, of course, is being required to send a great deal more water down into the Delta for fish and wildlife and recreation and so on. So they are going to be, themselves, short of water. So we were interested in the project, we were interested at the same time in negotiating a contract with the bureau, and at the same time, trying to arrive at some kind of a cordial agreement with the East Side people and with the Sacramento people.



Agreement with Other Interested Parties

- LaBerge: Now, were any of them also negotiating with the bureau for the same water?
- Reilley: Yes. They were, of course, interested in the supply. None of those projects were built yet. Of course, a good deal of the projects, under the appropriations for them, had allocated water in the studies to these different projects. That was one of the problems, of course, is that, were we one of those that was supposed to be a beneficiary of the project or not? Because the primary purpose of the Bureau of Reclamation's project is to serve agriculture, whereas we were going to use it for municipal and industrial purposes. So you don't have a priority, like you do in the state, for a municipal use.
- LaBerge: I didn't realize that. So now from what I understand, you did come to an agreement with all those groups before--
- Reilley: We did. We did come to an agreement.
- LaBerge: You did all the negotiating?
- Reilley: Yes. We had--well, of course, I had engineering help, Francis Blanchard, and also from Harvey Banks and Norm Murray, who was the partner of Bill Gianelli. But as far as the legal part of it, I was doing that.
- LaBerge: That was quite a coup for you to get that agreement!
- Reilley: Well, it got us launched on the project. It was then, after that, where this "fly in the ointment," so to speak, started to come into view, was when the bureau was getting its water rights for the American River from the state water board. This is when Bill Warne issued his famous edict from the chair, although we weren't a party to it, that their provision for the East Bay was a waste of water, an unreasonable use of water. That came right out of the blue. I think, as I've indicated before, the reason for that was because they were a rejected suitor for the use of the state water. In any case, that famous statement caused us a lot of trouble because that was quoted by everybody that opposed us. So then, Warne issues that edict without any evidence being presented before him at all, he just said it. But it was quite damaging to us.
- LaBerge: Was that before you actually had your contract with the bureau?



Reilley: I'm trying to think of the timing of that. I think it may well have been afterwards.

LaBerge: So after 1970?

Reilley: It might have been, although I'm not certain of the date now.

LaBerge: We might be able to find that.

Reilley: We had a lot of those things going on at the same time. But we eventually reached an agreement with the United States. We reached an agreement with the East Side people, and we reached an agreement with the Sacramento River--they had some kind of an association, which it would not affect them. We made certain concessions. One of those was that we would actually cut down the amount of water that we wanted to obtain from the American River, down to, eventually, to 150,000 acre-feet. I think originally it was up around 200,000. But we agreed to support the East Side Project, when and if it ever surfaced. We agreed to a number of different things that would be helpful to other parties, and they eventually agreed that we could take that 150,000 acre-feet. Then, it was after that, well after the contract was signed in, I think it was, 1970, if I recall my dates correctly, that the people on the Amer--

Environmental Defense Fund v. EBMUD, 1977-1980##

State of California's Involvement

LaBerge: Okay, the Environmental Defense Fund, and Save the American River Association.

Reilley: Yes. They filed a suit against us. It was interesting that they filed it against us to block us from taking water under the contract from the American River because we had no water rights on the American River at all. It was the United States who was going to take the water from the American River.

But the curious part of that is, at that time, there was great doubt that the state could sue, and enforce its water rights restrictions and its procedures on the United States. So the thought was that, while they couldn't sue the United States, they could--we were in there, we were subject to the state regulations--so therefore they could sue us and enforce those

rights against us without even naming the United States as a party in the action, although we were obligated to the United States under contract to pay for this water. They were going to force state restrictions on us that prevent us from getting the water at all. So we were in kind of the intolerable position where we'd be obliged under the contract to the United States, and at the same time prevented under state law from taking the water. But again, I think it was--and the state encouraged that lawsuit. They eventually jumped into it, and the attorney general appeared in it.

LaBerge: Oh, really? I didn't realize that.

Reilley: But, I found out later--

LaBerge: Who was the attorney general then?

Reilley: The guy from Los Angeles who ran for governor, Evelle Younger. He's been under criticism because he was getting so many different kinds of pensions. He was a general in the air force, and then he was attorney general, and then he was a judge, and something else, I've forgotten all the things he was.

I remember we went over to his office because we were astounded--well, I guess they didn't appear as a party, but they filed an amicus brief before the appellate court. The first thing we knew we got served by--you know, in the normal course of things, you'd expect that when the attorney general is going to come into something involving a public agency, a fairly substantial public agency in the state, he might ask you what your views are, you know, and do you have some reason why we shouldn't be doing this thing to undercut a service of water to a million people in the state of California. But that never happened.

LaBerge: It was just a surprise to you.

Reilley: It was absolutely, it came out of the blue. We went over there; he, of course, he didn't seem to know very much about it. Later on I found out again that it really wasn't our project at all, but they wanted to get at the United States to figure out a way to enforce the state's laws as to water and the use of water through the back door.

## Federal-State Issues

LaBerge: Was the reason they couldn't sue because of immunity from suit of the federal government?

Reilley: Well, there were a couple of cases that seem to indicate that when the United States was building a project, they did not have to subject themselves to the restrictions placed upon them by the state--individual states. There was a case called *Arizona v. California*, I think, a case that seemed to indicate that way.

But as it turned out, there was another case that was pending at the time this EDF suit against us, which ultimately the United States Supreme Court determined that yes, indeed, the United States was subject to the water rights laws of the individual states. They determined that, so that the state then lost interest in our lawsuit because now they could go against the United States directly, so they didn't have to go through the back door.

Eventually, when it came back from the United States Supreme Court to be retried before the state supreme court, in our case--which I'll go into a little bit later--the state actually filed an amicus brief on our side!

LaBerge: Oh, really?

Reilley: Because the ultimate result of what they succeeded in doing tended to disrupt the administrative procedures, which were established in the state for the issuance of water rights. What determined our suit was that, even though these matters had gone before the administrative body of the state set up to handle water rights, a third party didn't have to pay any attention to that. He could go in and sue the recipient of the water rights directly, without going before the State Water Resources Control Board. The state said, well, that's not such a good idea after all. And so, they filed a brief which supported us, but unfortunately, didn't succeed.

LaBerge: This is after all these parties, EDF, etcetera, asked to have it removed, and have the state board be the referee? Is that what you're talking about?

Reilley: No.

LaBerge: We're probably jumping--

Reilley: Well, yes. This thing went on for so long, it has so many different kinds of trials established, it's a little bit difficult to follow sometimes. But first of all, EDF filed suit in a state court, and they sought to block our project, our contract, altogether on the grounds that it violated the state constitution of restriction against unreasonable use of water, or the waste of water for two purposes, two reasons. First of all, they claimed that we could get water from another source without doing great harm to the environment by getting it from the Delta. If we needed water at all we could do it that way. And secondly, that we didn't explore the availability of water from using waste water. That waste water thing eventually dropped out of the picture because they, actually, they didn't have a chance on that either, anyway, because the district is probably one of the leaders in the use of waste water.

LaBerge: Yes.

Reilley: In the state of California. But in any case, that was one of the issues in that case, which eventually did not become important.

#### Course of the Trial

Reilley: We succeeded in winning in the trial court. They appealed, and it was decided that we got sheltered under the United States' ability to build the project and enter into the contract, and therefore by federal law, we were immune from this. That then went up to the state supreme court, and we succeeded there.<sup>1</sup>

Then the EDF appealed to the United States Supreme Court.<sup>2</sup> Now, the United States Supreme Court ruled that because it had just almost, within a period of months, had ruled in favor of the state of California, that it had the right to enforce its restrictions on the United States, that therefore, the basis of our winning was no longer valid, that it should be sent back to the state court to determine whether the case should go forward.

We went back to the state supreme court, and that's, at this point, where the state then moved in as an amicus--filed an amicus brief in our favor because they said, we argued that a third party was not appropriate, that it should go before the

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<sup>1</sup>EDF, Inc v. EBMUD, 20 Cal. 3d 327 (1977).

<sup>2</sup>439 U.S. 811 (1978)

State Water Resources Control Board to determine whether there was a reasonable use of water, and so forth. And the state supreme court ruled, no, that the case could proceed on the basis that it was a violation of the state constitution.<sup>1</sup> Then it went back to the trial court. And subsequently, another issue got involved in it, in that there had been growing, in the state of California, another doctrine called the public trust doctrine.

LaBerge: And you know what, you told me about the public trust doctrine last time, but I didn't realize it was going to come into this.

Reilley: Yes, in effect, that doctrine is that you don't ever give a permanent right to water at all, that it always can be reviewed as to whether what you're going to do is consistent with the public trust of the use of water for fish and wildlife purposes.

LaBerge: Now, in all of these suits, did you appear before the state supreme court, before the U.S. Supreme Court?

Reilley: I appeared, I handled the case all the way through. When they filed the appeals to the United States Supreme Court, they did not provide, the court did not provide for a hearing, they decided it on the filings.

LaBerge: Okay.

Reilley: But in all the other cases, all the other instances, I appeared for the district. The only--about the time that it went back to the trial court, which was decided before Judge [Richard] Hodge, in Alameda County Superior Court, I had, by then, retired. I actually was there for two years after what would have been my normal retirement period. I stayed, I was there for two extra years.

LaBerge: As a consultant.

Reilley: No, actually, it was general counsel.

LaBerge: Oh, were you were working just on this suit, or everything?

Reilley: No, it was--

LaBerge: Just a regular job?

Reilley: Just a regular job. I was working on this suit, but it didn't actually go to trial until after I had left.

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<sup>1</sup>26 Cal. 3d 183 (1980).



LaBerge: Did you go, though, to the trial, no?

Reilley: No. But I had meetings with Bob Maddow and some of the other people involved in it.

LaBerge: Is this one that did not go to trial because it was sent to the state board as a referee?

Reilley: Well, that was after I left, but that happened. Interestingly enough you can see the different flip-flops that happened in the course of this case. At the request of the plaintiffs, the Environmental Defense Fund in Sacramento County, then, they requested when it went back to the trial court, that it be referred to the state board, as provided under the water code, for its findings and recommendations, which then ultimately went back to the court for its review.

The Hodge decision is a long one but essentially it provides for when the water can be taken, and under what circumstances. The core of the decision is that water quality is a legitimate basis upon which a municipal water supply can obtain the right to the use of water. It is a factor that can be weighed in determining whether what you're doing is reasonable under the state constitution.

LaBerge: Is this still under the public trust doctrine?

Reilley: Well, it would be under either. The public trust doctrine doesn't absolutely forbid you to use water, but if it has some interference--there is a considerable, I think, a considerable overlap between those two--the constitutional provision about reasonable use of water and the public trust doctrine are fairly parallel in impact.

LaBerge: Tell me about after you got these agreements, in 1968, from Sacramento River and the East Side Project, how then they later, or not very much later, decided they would come against you with the Environmental Defense Fund.

Reilley: Well, it's actually the Sacramento County that came against us. It wasn't this association, although we tried to argue that they were a party to that--to the association, which entered an agreement with us, and that their rights, and so on, had been considered. But it didn't help us very much.

Personnel of the Bureau and the Contract

- LaBerge: Who in the Bureau of Reclamation did you deal with?
- Reilley: The director, at that time, was a name named Sullivan, but--
- LaBerge: And this was the regional director?
- Reilley: Yes, the regional director. And the man that did a lot of the negotiating with us was a man named Reggie Howard. And, there was another man, I can't think of his name, and there was also a representative of the Regional Solicitor's Office.
- LaBerge: And how did those negotiations go? Were they anxious to have you--?
- Reilley: Yes. They wanted us to be a customer because, as it turned out we're the only customer outside of the Sacramento Municipal Utility District who took water for their nuclear power plant. And now that that's shut down, they don't even have that. Yes, they were quite anxious to get us as customers, but they were-- wanted to get us as customers under terms as favorable to the United States as they could. As it turned out, they've been criticized rather heavily that they didn't drive a hard enough bargain.
- LaBerge: Criticized by Congress?
- Reilley: Yes, by Congress, and by--there's been, oh, committees, or commissions that have made studies of the water pricing of the bureau of reclamation.
- LaBerge: What was the contract you agreed on?
- Reilley: You mean the terms of it? I'd be hard pressed to--
- LaBerge: Okay. But it was a dollar amount per year, something like that?
- Reilley: Oh no, no, it's a lot more than that. But it's a, I would say, just off the top of my head, it's somewhere around sixteen dollars an acre-foot, or something like that. It's a progressive scale. In other words, it goes up in increments. In other words, we weren't required to pay the full for a 150,000 acre-foot the day we signed it. I mean, it went up in increments, which, I think, now, somebody told me that the total now, up to now, is somewhere around fifteen million dollars. But eventually, it's a take or pay. In other words, we have to pay whether we take water or not. The part of it which, you know,

that rankles a little bit is that a lot of those parties that were reserved water rights, contractual rights, up in Sacramento, haven't paid a dime, but the water has been held for them without them having to pay anything, whereas the district has had to pay this amount, although it hasn't except for the--during the drought it took a small amount, I think, around 40,00 acre-feet, or something like that. It hasn't had any water taken from there.

Basically, what it provides, is there are two of them. One is to pay for the capital costs of the canal and ultimately, for Auburn Dam, and also for the operational costs. There is a formula established so that our take, our total take, is related to the total capacity of the project. Then there are some deductions from the total cost of the project, which are for flood control--which doesn't have anything to do with the water supply at all--the generation of power, and those expenses and costs which are deleted. So you arrive at a total figure, and basically, it's our relation of the amount of water we're taking to the total amount of water, and the total cost.

#### Source and Quality of the Water

LaBerge: What was the issue of where you were taking the water from? Some people objected to the fact that it was at Folsom South Canal rather than the confluence of the American and the Sacramento, or something?

Reilley: Right. It's still a point of contention.

LaBerge: Can you tell me something about that issue?

Reilley: Yes. It basically is an issue of water quality. The district wanted to take water directly from the American River, and not take it from the Folsom South Canal at all because the highest purity of the water, of course, would be to get directly from the American River, which is a rather pristine water source.

There was a feeling of, well of, that it wasn't right that somebody from the East Bay would be coming up and, as they call it, "putting their straw" into their river. So, in order to avoid the feeling, and it was an emotional thing, rather than take it directly from the river, we agreed to take it from Folsom South Canal.

We agreed to take it at a specific location called Grant Line Road. The reason for that is, is that, that take-out point is above the point of the proposed hood clay relief, which I already mentioned to you, which would take water from the Sacramento River and pump it over into the Folsom South Canal so it would go south. Our idea was to take it from Grant Line Road, above that confluence of that project, so that the water would not be contaminated by the water from the Sacramento River.

The Sacramento River is a pretty polluted source of water. You've got a sewage disposal plant of Sacramento dumping into it. You've got sewage from up stream, you've got herbicides, pesticides from farms, you've got about every kind of pollution that you can think of in that river, and it's certainly not the kind of water that compares in any way to what we get from the Mokelumne River.

The idea was to try to get the highest quality that we could reasonably obtain, and the way that we could do it was to take it from a point on the Folsom South Canal, which would be free of the contamination of the Delta or the Sacramento River. Now those people, you know, it's kind of a curious thing, that the people like the EDF who are always whining about how polluted water supplies are, and so on, are those who are insisting that we take it out of the Delta rather than take it from a supply which is as pure as we could get it.

LaBerge: Is their reasoning--does it have something to do with the fish and wildlife, or is that what is?

Reilley: Well, it certainly has. It certainly is what the people of the Save the American River say. Jim Jones and those people, they've never seen a water supply they ever liked, you know --

LaBerge: Is Jim Jones from the Save the American River?

Reilley: Yes. He's kind of, or at least he was in my day, one of the leaders of that association.

LaBerge: Do you remember any of the leaders of EDF?

Reilley: Yes. Tom Graff is attorney for them. He was--as far as we were concerned, he was the leader.

LaBerge: In all of this were you also dealing with the Department of Fish and Game?

Reilley: Well, not so much on--of course, they were appearing, very much so, in the hearings for the Bureau of Reclamation, to get their



water rights on the American--it was a kind of a curious thing because at the same time the bureau was saying, that as the United States, they didn't have to get water rights from the state, they nonetheless filed with the state and put on hearings. That was, of course, a forum in which the Department of Fish and Game was very prominent--as well as the Fish and Wildlife for the United States.

LaBerge: Okay. All of this, you dealt with the Bureau of Reclamation because the American River was one of the rivers of the United States, and the other rivers are not, is that--?

Reilley: I'm sorry I didn't--

LaBerge: Well, is the American River one of the "rivers of the United States," as opposed to being a California river? Is that why the bureau is the one involved?

Reilley: Well, of course the bureau is involved because they are the ones that are building the projects and of course, the American River is one of the waters of the United States, one of the navigable streams, subject to action by the Congress and the United States. But, you know, the Congress could, if it wanted to, could say tomorrow that they are going to take over the entire control of the water, and the only way it can be used or utilized would be under their direction. Of course, they're not going to do that. But in the absence of them doing that, the state, of course, has its requirements and restrictions. [Tape Interruption]

#### The Washington Presence##

LaBerge: Okay. We're still talking about the American River. Are there some issues we haven't covered on this? How about the East Side Project? Did that group ever object after you had you first--

Reilley: No, not after we signed the agreement.

LaBerge: No, okay. Who were some of the easiest people to deal with in all your negotiations?

Reilley: Easiest?

LaBerge: Or maybe you want to tell me the hardest. They probably stand out.



Reilley: They all are pretty rugged, you know. I thought that within the framework of a huge bureaucracy, like the Bureau of Reclamation, they were fairly reasonable to deal with. They, of course, are always constrained by the fact that they're on a long tether from Washington where they can be yanked back from time to time, and they always have to keep looking over their shoulder to see what the hell is happening back there. They're also constrained by politics too, you know. They're always worried about whether the Congress is going to chastise them. For that reason, I would say, they have a difficult time, from their standpoint. But within that framework, I thought, they were pretty decent to deal with.

LaBerge: When you were dealing with them did you ever talk to the secretary of the interior, or to the--

Reilley: We went back and talked to the assistant secretary of the interior several times, and also, of course, with the director of the bureau.

LaBerge: Who were they?

Reilley: I'm trying to think of his name, I can visualize him, but I can't think of his name right now.

LaBerge: We can fill it in later. How many trips did you take back to Washington?

Reilley: I would say, probably, at least a half a dozen.

LaBerge: Did you also have an EBMUD representative back there, the way you did in Sacramento?

Reilley: Yes. We had an attorney by the name of Northcutt Ely who represented the district and other people in his office were involved, too.

LaBerge: So would he have gotten involved in this project, or--

Reilley: He would get involved sometimes in the Washington end of thing, but not directly in the local negotiations. Actually, he didn't have too much to do, except with--when we'd go back to try to influence the continued appropriation for the Auburn Dam.

Issues in the Controversy

LaBerge: Who was the hardest to deal with, do you think?

Reilley: Well, of course, the people for EDF were--Tom Graff, personally, is not a difficult man to deal with, he's a decent person, but certainly not one who is going to budge very much. But I would say people like Jones, from the Save the American River--he tends to be somewhat, like some of these people, tends to be somewhat of a fanatic. You know, they don't disagree with you, they just think you have to be a bad person because you disagree with them.

LaBerge: All these negotiations on the American River, was new water law enunciated, or was it old water law adjusted to your circumstances?

Reilley: Well, no. Of course, the whole EDF lawsuit was breaking ground because there wasn't any previous law directly on that point. The idea that whether a third party could come in and attack a--not directly the validity of the contract, but whether a local agency could carry out a contract which it legally and validly entered into with the United States, whether that could be set aside because of state law. And whether water quality is a prime factor which can be weighed, and must be weighed in evaluating whether a municipal water supply can be obtained under the state constitution.

LaBerge: When you stayed on as a consultant to the district, after you retired, was it mainly on this suit?

Reilley: No, not really. Well, some of it was. I was only about three years--let's see, I stayed on two years as general counsel, which I carried out the normal duties, and then for three years after that, I was available to Bob Maddow, principally for providing him with the information--kind of historical recollections, I guess, of what happened before to help him in his current negotiations and litigations.

LaBerge: Well now, since the suit was decided, I guess, in 1990, finally, do you think the East Bay is going to get that American River water?

Reilley: Well, a lot of things have happened since that. They still have vehement opposition by the Save the American River people. I don't know whether EDF is still involved or not, I haven't heard of that. But the people in Sacramento, and Sacramento County, are insisting still that if the East Bay wants to take water they should take it at the confluence of the American and Sacramento

Rivers. In other words, the water must first flow down the American River before the East Bay takes it.

The district, of course, now is in the process of trying to implement the contract. They are proceeding with an environmental impact report, and at the same time, they're trying to negotiate with Sacramento to see if they can mollify them some way, and also with San Joaquin County, who are really quite eager to get a supplemental water supply because their farm water is-- the ground water is subsiding, and they need a supply. The district's negotiating with them on the basis of whether it can, in conjunction with utilizing the American River supply, it can help the San Joaquin people by using it in conjunction with its Mokelumne supply.

And so God knows whether they're going to be able to get through it. As it is, the district's contract with the bureau only has about seventeen more years to run. Unless something happens in that period of time, I don't know whether the United States will renew the contract. The basic problem there is that the United States is being required to release more water into the Delta, and the question is, how much water are they going to have available in their river supplies?

#### Consultants in the 1990s

LaBerge: Aren't you in a group now of retired East Bay people who advises? Is this one of the issues you're advising on?

Reilley: Well, they've asked us from time to time what our views are. They get some of us old goats and they ask us about what we remember about things. There's also a committee out here in Contra Costa County called the American River Utilization Committee, which includes a number of other people, other than East Bay people, although some people of the East Bay are in it. John Nejedly, a former senator from out this way--state, senator-- is the chairman of that group, and a man named Chuck Brydon, who is also active in it. Their object is to try to assist the district, if it can, to obtain a water supply because they know that after the year 2000, the district's going to be short of water.

LaBerge: So are you in that group too?

Reilley: Yes. I attend the meetings.

LaBerge: While all of this was going on, you were also just doing regular everyday district work, too.

Reilley: Yes. There were strikes, and things of that kind. Labor problems, discrimination lawsuits.

LaBerge: I don't think we talked about that. Do you want to go on a little more, or shall we stop here and pick up another subject later?

Reilley: Well, it's more or less up to you. I figure that whichever is convenient for you.

LaBerge: Good, because I certainly think we have enough to have another whole interview, that we haven't covered everything.

Reilley: So, if you feel you've got enough information--

#### Interested Users in the American River

LaBerge: Maybe we'll just wrap up the American River. Is there some question I haven't asked you about the American River that you'd like to talk about? This is the clearest it's been to me from other things I've read on the history of what the whole controversy was, from what you've said.

Reilley: Yes. There were a lot of different people with a lot of different axes to grind. As I've indicated to you, there was a considerable amount of pique, originally, from the state because they wanted us to take from the state water plan.

We had the EDF, who was basically an environmental defense fund--is their name, what it entails, and their interest was basically to try to get a handle on the United States to force them to come to terms with the ongoing environmental necessities of water development.

Then we had the American River people, like Jones, who, as I've indicated, was an avid fisherman. Basically, I don't think he'd care if the entire East Bay was to dry up as long as he could go up there and drop a line in the American River. You know, that is his bag, and I don't fault him for it if that's what he [chuckle] wants. But that was where he was coming from.



And then, there were people who were enamored of the American River Parkway, which is downstream on the American River, which is developed, it's a nice developed area.

You had the East Side people who were interested in getting as much water as they could to come down the east side of the Sacramento Valley or the San Joaquin Valley. Their interest was in agriculture, and they really--well, actually, they were pretty reasonable people to deal with, but you know, they had their needs. And I would say, you asked me before, who were probably the more reasonable people, and the more reasonable people I found were people like those farmers because they know the need for water, and they know the need to develop it. They respect that everybody else has a need also, and I would say, you know, there were exceptions, some people were kind of hardheaded, but basically, they were pretty reasonable people to talk to.

Then, of course, there were our own people, which were interested in getting a water supply for the citizens of the East Bay. We've foreseen that there could be a real shortage, and there may well be a real shortage of water.

So you had a lot of conflicting interests, and ultimately, as I said, there was also a desire on the part of the state, and Robie and his crew, to try to get a handle on the United States, and they were using us as a lever to do that.

### Board Support

LaBerge: Did you always have the support of your board?

Reilley: The district board throughout all my time was very supportive. Within the last few years, we had, whatever you call that, a minority on the board. We had a director by the name of Helen Burke who was from Berkeley. She was associated with the Sierra Club, and she was very much on the other side of water development. But she was very much a minority on the board. Then there was another director, just before I left, who was elected from out in Richmond, Jack Hill. He defeated a director named Bill Moses, who had been on the state water board, and who was very, very supportive--was a lawyer. And those two, this new one from Richmond and Helen Burke were a minority of the board. And so, those two were--that was the result of expanding. To go back, I don't know whether I've explained this to you, but the district originally had five directors, and they were elected at large.



LaBerge: You did talk about that, and how they expanded to seven?

Reilley: They expanded to seven because John Knox, who was the assemblyman from out in Contra Costa County here, was of course, a Democrat. He felt that the directors of the district were Republicans and self-perpetuating, and so on. So he was determined to change the composition of the board, which eventually, he succeeded. They originally thought, well, what we'll do is increase the representation from Contra Costa County, we'll increase the directors to seven, and that will mollify John Knox. Well, of course, it didn't because they were still elected at large. Eventually, he pushed through legislation which provided that they have to be elected from wards. So from then on, you have had a politicization of the board, and it became more and more political, and less people who were business types.

LaBerge: Those were the only people who were, maybe, opposed to your negotiations--

Reilley: The development, when I was there. Then thereafter, they had a complete change and eventually, they had a majority who were against the--who were elected by the Sierra Club, and other no-growth people, who were against development of the water supply at all. And that, of course, has caused them to lose a lot of time which they could--they lost the opportunity, I think, to act quickly to nail it down--once they got a favorable decision in the EDF lawsuit, if they could have moved directly ahead to develop the project, and if they had moved ahead to build the so-called Buckhorn project, where they could store the water, they would have had a much better chance. But when you want to do anything, when you want to build anything, time is your enemy because the more time goes by, the more people line up and ally against you.

LaBerge: Why don't we end there for the day, and I would think we could cover--maybe cover everything in another interview.

## VI VARIOUS ISSUES

[Interview 5: March 27, 1996]##

### Hal Raines and the Camanche Project

LaBerge: As I said, when we stopped last time we talked off tape about Mr. Raines, and how he got the Camanche project through, and his talk with Attorney General Pat Brown. I'd like to hear more of your reflection on that.

Reilley: Yes, I think that, if it wasn't for Hal Raines's brief that he provided to the attorney general, who was Pat Brown at that time, there could not have been a Camanche project because it was entangled with what is called the county of origin and the area of origin, which is in the water law of the state that protects the water rights, the rights to water, in the mountain counties, or the counties of origin, as it's called.

It kind of hangs over any project because even though you have gotten a permit from the, what was then, the State Water Resources Control Board--the water rights board--the mountain counties, if they had a need for that water in the future could in effect reclaim that water, so that it would be hanging over your project into the future.

There was a question as to whether those rights could be assigned or released to someone like the East Bay for a municipal use outside the area of origin. The attorney for the water board, Henry Holsinger, already was quite a well-known water lawyer and had ruled that it could not. And Hal Raines prepared a brief for the attorney general for his opinion asserting, of course, that it could be. Eventually the attorney general, Pat Brown, issued a ruling that it could be assigned to the East Bay and therefore that cloud, that would otherwise have hung over the

Camanche project, was removed and it enabled the East Bay to move ahead with that project.

So, it was a remarkable job, and I think that opinion of the attorney general, I think, is still effective. I know Bob Maddow, who was succeeding me as the general counsel of the district--now is in private practice--was telling me a while back that he had run across that opinion of the attorney general, and it was operative in a case that he was acquainted with, or taking part in. He was unaware of the fact that it was Hal Raines's work which was at the background of that opinion. So, it was a remarkable job and Hal deserves a lot of credit for that.

LaBerge: Was the attorney for the water rights board, was that Harvey Banks?

Reilley: No. Harvey was not an attorney, he was an engineer. I'm trying to think of the name of the man--he wrote a book on California water law which was quite an authority.

LaBerge: Did you have anything to do with that whole controversy? I mean, I know you were at the East Bay then.

Reilley: Well, Hal was handling the water rights aspect of that, and the legal end of that. My contribution to the Camanche project was more in the field of litigation. I was spending a lot of time up in the country. We had to acquire a great deal of property for that reservoir, and also for the Third Mokelumne Aqueduct which was being built roughly at the same time--the aqueduct coming down into the East Bay. A lot of time I spent up in the country, Amador and Calaveras and San Joaquin Counties, trying eminent domain cases. Later on, afterwards, I was handling disputes that arose out of construction contracts. But I did go along with Hal in the hearings for the Camanche project. I accompanied him, and also rendered what help I could that he would need--I packed his books. But Hal was the one who handled the water rights end of that.

#### More on Counties of Origin Law and the American River Project

LaBerge: Did the counties of origin law come into play when you were negotiating on the American River?

Reilley: Yes, they did in a rather offbeat way. You see the water rights for the American River were acquired by the United States. So, our rights on the river are--arise out of a contractual right

with the United States Bureau of Reclamation. The problem as far as our water rights were concerned arose out of--there were people on the Sacramento River, water users whom we had to come to agreement with. There were people of a proposed [Central Valley] East Side Project [Association], which was further down the Valley, which was proposed to take off from the end of Folsom South Canal, which came from the American River. They raised objections to our taking water from the bureau because-- [Telephone Rings]--excuse me.

LaBerge: You were talking about people from the East Side Project raising objections.

Reilley: Right. They raised objections because they thought that the East Bay taking water from the American River might take water which would otherwise go down the Folsom South Canal and end up in the proposed East Side Project.

So, we had long negotiations with both the Sacramento people, and with the East Side people to assure them that we would not interfere with their project. There were various agreements which were reached with them to assure them of their rights. We limited the amount of water which we would otherwise have proposed to take from the Bureau of Reclamation to satisfy their fears. That was going along okay. It took us a couple of years to work all of this out, both with the bureau, and with the East Side people, and the Sacramento River people.

We thought we had everything all pretty well settled, and then the people in Contra Costa County Water District raised the point that they were under the area of origin, which means that if you are part of the area of origin, or adjacent thereto, you have a prior right. So, we had to then sit down with them and work out satisfactory arrangements with them so that they would not protest.

So, after we got all of those people in the fold, so to speak, then we signed the agreement with the United States thinking that we had resolved most of the difficulties, which of course, did not turn out to be the case because later on the Environmental Defense Fund and the Save the American River people filed a suit which then went on for thirteen years, or seventeen years. It went on for thirteen years when I was there, but then it eventually was resolved, or seemingly resolved.

LaBerge: Right, because we still don't have the American River water.

Reilley: No. They're right now in the process, and they are in some very interesting negotiations in the East Bay now, involving a lot of



the same cast of characters because they have involved the County of Sacramento, the City of Sacramento, the Save the American River people, the people in the Delta, now, have added to that problem because of the water for the Delta. So there's a host of problems out there that they are having to work with, as well as the technical ones of what is the best way to utilize the water.

They also are involved in extensive negotiations with Amador and Calaveras and San Joaquin Counties as to their needs because they have a need for water, particularly in San Joaquin County, they have a difficult problem of a lowering water table which has caused them a great deal of concern, and they're hoping that they get to work out a scheme along with the East Bay to alleviate that.

#### Consultant to the District after Retirement

LaBerge: When you retired, then you were hired as a consultant to the district?

Reilley: Yes, I was. For about three years, I continued to have a relationship with the district. Basically it was just to help them out with any carryover knowledge that I had from the litigation, which of course continued. After I left, they retained a firm of attorneys--water attorneys from down in southern California to help them out. They, along with Bob Helwick, who did a lot of the work, and Bob Maddow, who was the general counsel.

LaBerge: Do you know the name of the firm in southern California, or not?

Reilley: It was Art Littleworth's firm.

LaBerge: Was that what you mainly consulted on, was just that whole issue?

Reilley: Yes, mainly that. Basically, I didn't do too much, except that, as I say, provide a little institutional memory, I guess you'd call it, for some of the things they needed to re-visit.

LaBerge: Now, aren't you on some kind of a committee--maybe not a committee, but it's a group of retired people from the East Bay who either give advice or consult? Do you want to tell me about that?

Reilley: Yes. There is a group of us which is made up of, basically, John McFarland, a former general manager, and Orrin Harder, a former



chief engineer, and Hal Raines, myself, Francis Blanchard, and Rich Kolm, who was the engineer who was involved with the district's water supply.

LaBerge: Do you meet on a regular basis?

Reilley: No, not really. Actually, that group was more active when we had the group of directors who really were opposed to the American River development. We felt that the East Bay was really heading for a water disaster if they didn't develop that source, that they were pursuing a very shortsighted policy. We endeavored to write to the board, and bring that to their attention. Then, there was a change in the board which reversed that course, and it's now actively trying to develop an additional water supply source, which we feel will be critical at the turn of the century.

We have, from time to time, met with the group that John Lampe, who is in charge--basically, in charge of the water development projects--they've been kind enough to meet with us. We have reviewed a good deal of the material, and have offered whatever assistance we could to them.

There is another group called American River Committee, which is headed up by retired Senator John Nejedly, and Chuck Brydon, who was active from out here. Chuck is not a former East Bay person, but he is out here in the Contra Costa County. He's interested in water supply development. And, there are a group of others, and there are some East Bay people who are active also, including myself, Orrin Harder, and Rich Kolm, and John McFarland.

LaBerge: So, tell me what that group does.

Reilley: Basically, it's to provide encouragement to the district to develop additional water supply sources which, the Contra Costa people feel, and I think rightly, that the future health of the economy in Contra Costa County is dependent on an adequate and reliable source of water. And before, like our management that I referred to, they, I think, came into being when the district's former board of directors were indicating that they didn't want to develop additional water sources, really, and that the endeavor there was to provide more or less of a political group that would encourage them to change their course.

LaBerge: Do you know about what year the board changed to a new--

Reilley: Yes. It was the last election, which--what is that? 1992, I guess.

LaBerge: Probably, yes.

Reilley: See, the board is elected on a staggered basis--they're staggered for the seven directors, they're not all elected at once.

LaBerge: That's a real tribute that all of you are willing to give your time to still do that. I mean, that you're looking forward and you care about the future.

Reilley: Well, of course, when you work at something all your life you hate to see it decline, and that's particularly in reference to the American River, and additional water supplies, you can see that it's critical. The thing about a water supply is that what you're talking about now is something which will become critical many years into the future. But, if you don't do it now, it's not going to happen when it does become critical. Because, for example, Camanche Reservoir was built and the Third Mokelumne Aqueduct was built long before--and the planning for it and the actual construction of it--was built long before it was actually needed. These things just take many, many years to bring into being. If you don't plan ahead, many years ahead, you're going to be in a very difficult spot when it becomes necessary to have the project in being.

So, I suppose it's people like ourselves who have worked with this and realized this, that if we don't do it, I don't know who's going to do it. You know, it's very difficult for people to understand the problem, because as long as you can turn on the faucet and something comes out, you know, 99 percent of the people don't realize even where the water comes from.

LaBerge: That's right, that's right. And it takes someone with your perspective, I think, to give that kind of advice.

Reilley: Well, it's like everything else, you know, if you're a foot doctor, why you, everything is wrapped around the person's feet [chuckles], you know. I guess, because that happens to be a particular line of work.

General Managers

## John McFarland

LaBerge: Let's go to another subject. We did talk about different boards, we didn't talk about all the general managers, and I think, maybe we could start with John Harnett, because wasn't he the general manager for most of the time that you were--

Reilley: Actually, a good part of the time, John McFarland was the general manager, and then he was succeeded by Jack Harnett. Then when I left, of course, Jerry Gilbert was the general manager. They all had varying styles and different personalities. They also had varying strengths and some weaknesses, just as everybody does. But by and large, they did a good job.

LaBerge: Would you care to comment on what the strengths and weaknesses were?

Reilley: Well, [pause] as far as I observed them, John McFarland was, of course, a Stanford graduate. He was an expert on management, and that was his forte, although he really backed the engineers in developing the Camanche project. That was under his regime. He, of course, was supported by a board that was very much--very helpful to him, and he was blessed by a strong president of the board, Louis Breuner, who was a very vigorous man and forceful. So John McFarland was aided and abetted in his efforts to change the district around by the fact that he had the support of Mr. Breuner.

The thing about it is, when John McFarland came, the district was pretty much run by engineers. They had built the projects, they built Pardee; they'd taken over the system from the old East Bay Water Company, which was a private company. They were builders, and they were not necessarily business types, and the changing of the district from a construction project to a public utility, run like a business, was John McFarland's contribution to the East Bay. And he did a good job--brought a lot of people in who furthered that objective. And as I say, he was supported by the board and particularly, the president.

## Jack Harnett

Reilley: Then, after he left, John McFarland went over and became an executive for a savings and loan--I think it's Golden West, I believe it was called then. The president of that, which was a statewide savings and loan, was a man named Stuart Davis, who at one time, was on our board of directors and who was impressed by John, offered him a position as an executive of that organization, so he left. Then Jack Harnett became the general manager.

Jack was, of course, the general manager at the time when we negotiated the contracts with the Bureau of Reclamation. Jack Harnett had been in the army. He was a retired colonel from the Army Corps of Engineers. I think he was acquainted with the federal bureaucracy from his days with the [United States] Army Corps of Engineers. And so, he was helpful in dealing with the Washington scene, which we had to do from time to time. We were faced with an interesting problem with the Bureau of Reclamation because, perhaps I mentioned this before, it was at a stage where they were trying to devise a new pricing structure for their water supply--[Tape Interruption]

## Pricing Structure of U.S. Bureau of Reclamation##

LaBerge: Okay. I'm not sure if you have talked about that pricing problem, so why don't you tell me.

Reilley: Well, up to then, you know, the United States had built the Central Valley Project, a vast project. The pricing was, basically, a pretty simple thing. They just said, well, they would give a contract for forty years, and this is what the price would be, and that's what it would be for forty years.

Somebody began to think back in Washington, I guess, that that really wasn't such an excellent deal from the standpoint of the government, and that maybe they ought to have some scheme that would allow them to increase the cost over the prices that they had initially set, as the costs went up and inflation took place, and so forth. The value of the water, of course, would increase as time went on. So they endeavored to come to grips with that. Their idea of how to do that was to say, well, the United States will charge so much for water, and then it will adjust the price from time to time as the secretary of the interior shall determine. Well, if you recommended such a



contract to your client you'd have to have a hole in your head because you had no way at all of determining what the secretary of the interior was going to charge in the future.

So our thought was to arrive at a price that would be related to the cost of service to us for the amount of water that we were taking as compared to the overall project yield. That seemed to us to be a fairly rational way to do it. Of course, like anything else, the devil is the details. But the United States would sit there, and people in Sacramento would haggle with us, and we'd go up there, and they'd say, "Well, that's fine, that sounds good, we'll have to check with Washington." Well, maybe two or three months would go by and nothing. You wouldn't hear anything.

Then word would come from Washington that changes were needed, and we'd meet again, and they'd say, Well, but this is such and such, or they've got to change something. So we'd haggle away at that. Sometimes they'd come down to Oakland, every now and then. They had a young woman lawyer who used to bring down gallon jugs because the water was so lousy up in Sacramento that she used to like to get jugs of water when she came down to Oakland to bring back to Sacramento. But, that went on for quite a while.

Then eventually we arrived at a formula that we could put into the contract. Now, I understand that the United States says that's--that isn't such a great deal for the United States, and they want to change it. As I understand it, when they want to renew the contract, which is due to come up in about seventeen years, I guess, they want to revise that, and collect for all the back years that they didn't collect what they think is the fair price, plus interest, I guess. So, they're talking about something like a hundred million dollars. That, of course, will remain to be seen. There's going to be a lot of work for people to cope with that, I'm sure.

But in any case, we did arrive at what I thought, and I think most people who took part in it at the time, was a rational approach. One thing that we were concerned about, and which they said would never happen, was that we might be the only ones that were on the canal, Folsom South Canal, which was paying anything. If we had to pick up the whole price of the canal, we'd be paying for the whole project, which they had built for many other people, but who had failed to come up with a contract. Also, they had failed to complete the Folsom South Canal, it's never been fully completed. So, if we turned out to be the only ones, with the exception of the Sacramento Municipal Utility District, which built a nuclear plant and had a contract to take some water



for the nuclear plant, which is now shut down. But, in any case, we eventually reached agreement with them.

By the way, another man who was a part of our group was Francis Blanchard; he should be included because Francis is a true water guru. He is an engineer whose life work has been concerned with water supply.

LaBerge: I know you've mentioned him before. Was he an engineer there when you were there?

Reilley: Yes. Yes.

#### More on Jack Harnett

LaBerge: Was Jack Harnett's background with the army helpful in these negotiations, do you think?

Reilley: Well, Jack was familiar with the Washington scene. Jack was a leader who would, really would tend to avoid controversy, which is somewhat of an odd thing, being a soldier. He was a type of negotiator who liked to avoid any rough edges. He tends to compromise. For that reason, it was generally a better idea to have him back in Oakland and leave the tough talk to other people, you know? And I'm not saying that as a criticism of Jack, but he was a man who really didn't like to see people rock the boat. He liked to avoid controversy.

LaBerge: What about you? Were you okay with the controversy?

Reilley: Well, that's my line of work, you know. I've spent a good deal of my life in courtrooms where controversy is the name of the game, and negotiating contract settlements and land acquisitions and so on. Sometimes you have to be a little bit tough because otherwise you might look around and find out you don't have a shirt anymore. So I would guess that would probably be true.

#### Jerry Gilbert

LaBerge: Once you told me about the board looking for a new general manager, when they picked Jerry Gilbert. There was some story about that, of how they decided to get a head-hunter firm, or--

Reilley: Yes, they did. It was interesting because they did get a head-hunter firm, and you know the old phrase, let's make a national search, you know, that means that you're going to cover the entire country. And I guess they did. They hired Korn Ferry [International], or one of those firms, and they came up with some names.

Basically Ken Simmons, who was a director of the district and still is, is an African American, and he felt that there were no African Americans within the group of names, and he thought that it should be such. So the district board had a great deal of controversy internally over that, as to how they would select someone as a--my recollection is that Ken Simmons filed a suit against the district's board to block the appointment that they had in mind. I'm trying to think of whether he was just saying he would bring suit, or whether he actually filed a suit. But the point is that a minority member--I don't mean minority in an ethnic sense, but if you're on the losing side of a public body, you can't sue to block action by the majority because you don't agree with them. So that became my pleasant duty to have to bring that to the floor, although Ken Simmons is a fine director and we get along quite well.

At that point, when there was this turmoil, Jerry Gilbert, who, of course, is a well-known figure in water matters both nationally and internationally; actually he's a member of all kinds of international bodies and the National Science Foundation, whatever that group is, back in Washington. He was also the president of the American Water Works Association. He, I think, through Walter McLean--I'm not sure, although Walter had another candidate that he was quite anxious to put forward--Jerry Gilbert made it known to the district's board that he might be interested in being the general manager. So of course, he became a very attractive candidate.

I think the majority of the board responded favorably to that. But in order to satisfy Ken Simmons' reservations about the ethnic composition of the district's management, contracting, and so on, Jerry Gilbert, in effect, made kind of a little pact with the board, that he would accomplish certain goals and timetables as far as ethnic composition of the management and the percentage of contracts which would be given to minority businesses. That seemed to calm the situation down and Jerry Gilbert was appointed as the general manager.

LaBerge: Do you know about what that year that was?

Reilley: I'm trying to think of that. I can't remember exactly.

LaBerge: I was wondering, because you were there when the board adopted an affirmative action policy. I think it was 1975?

Reilley: Yes.

LaBerge: Would that have happened before Jerry Gilbert was hired, or maybe it was after?

Reilley: Oh, it was before, much before. I stayed on for two additional years after my normal retirement, and Jerry Gilbert was there during those two years, and he was there maybe a year before that, so maybe '80. Around '80 would be closer to it, I think.<sup>1</sup>

LaBerge: Did you have any input in picking the general manager? Or was that not related to your job?

Reilley: Well, no, really not but I would, of course, have attended all the board meetings and special meetings that they had, personnel meetings.

LaBerge: How did the voluntary affirmative action policy affect you? Did you write any personnel policies, or did you help hire people?

Reilley: Well, of course, we hired people in the district legal department. But any policy like that we would review for compliance with the law, and sometimes whether they would be in a form that would be defensible, you know.

#### Double Duty as Acting General Manager

LaBerge: I know, one other thing. You were both chief counsel, but then you were also assistant manager.

Reilley: At one time, I was--

LaBerge: Yes, so let's have that story on tape, how you got that job, and your salary.

Reilley: Yes. That was quite an interesting development. That happened during Jack Harnett's regime. They, at one time, decided that they needed somebody when Harnett would take off someplace, to sign documents, you know, as the acting general manager, and they couldn't wait for him to return. So the board discussed that,

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<sup>1</sup>Jerry Gilbert was general manger from 1981 to 1991.

and they said, "Well, we'll appoint an assistant general manager to do that." Howard Robinson, who was a director at that time, said, "Well, I don't want anybody to be the heir apparent who would get it into his head that when Harnett goes, he's going to automatically be the general manger. So we just want to get somebody who does his job and doesn't really have any desire to be general manager."

So they looked around and I, of course, was there. They said, "Well, how about you, Jack, do you want to do that?" And I said, "Sure, if anybody needs somebody to sign something, I'll be glad to fill in. And I assure you that I don't have any ideas of being an heir apparent, or desire to be the heir apparent." So that went on for a while, and I became the assistant general manager, and Harnett took off in his various things, and I'd sign papers.

Then at some stage, we had a director by the name of DeWitt Krueger, who never saw a pay raise for a public employee that he liked [chuckles], and he was protesting that so many of the employees at that stage of the game were getting more than twenty thousand a year. So he said, "What we need to do," by the way, Krueger's profession, he was a tax man who would go around to different corporations and try to figure out how they could lower their property taxes. So you can imagine where he was coming from. So he said, "Well, what we need to do is get some outfit," somebody, I don't know, some consultants in. I've forgotten who they were--"come in here, look at this outfit, and see what the organization is, and see if we can't get a handle on this thing." Harnett, of course, said, "Yes, all right, we'll do that." Jack got a hold of some outfit, and they hired them, and they made this study, you know how they do, they run around, ask people what they're doing, and they write up this big report, you know, and of course, obviously, if they're getting paid for doing this they have to find some way to say that people are getting too much money, or to reorganize, or whatever.

So one of the things, lo and behold, was this thing in there that says, this general counsel is the assistant general manager, so therefore he shouldn't be filling that role, and because it's been taken away from him, we can lower his salary! I read that and I practically went through the roof. So I went charging down to Harnett's office and said, "What is the meaning of this?!" So needless to say, after a certain amount of clamoring, they changed their recommendation. That was my foray into being assistant general manager. One time, I was also assistant secretary, too, because for the same reason, that they needed somebody to act as secretary when the other secretary was away. But nobody asked me to lower my salary for that.



LaBerge: Nor did they give you more salary, right? [chuckles]

Reilley: Nor did they give me more salary, either one!

LaBerge: You were just being a nice guy.

Reilley: Well, you know, I said, well sure, but nobody said, well okay, we'll put a little more in the paycheck.

### Federal Regulations

LaBerge: Well, let's talk about other issues that came up during those years that you were there, and your reflection on them. There were several federal regulations. For instance, the EPA was created in 1970 and then the Federal Water Pollution Control Act. Did any of that impact your work, or were you asked to give advice, or comments on any--

Reilley: Yes. We had, of course, the sewage disposal project for the main cities of the East Bay and interceptor lines. Of course, the district had to upgrade their sewage disposal project to provide a higher degree of treatment before it discharged in the San Francisco Bay. So we had a lot of activity arising out of that. We had to create ordinances that covered users, dischargers into the sewers, what they could put in, what they could not put in, methods of enforcement, methods of hearings to determine whether they should be fined or whatnot, and also to comply with the federal government's requirements.

We also received grants from the federal government for those sewage disposal improvements and so we had to help with the application for them, and then also, when the settlement came up, there was always some disagreements over what should be paid for, and what should not be paid for, and how much should be paid, and so on. A man named Frank Howard, in my office, handled most of that.

LaBerge: So in the midst of that, did you have to go back to Washington to talk to people, or how did you handle all that?

Reilley: Well, of course, a lot of it was handled here locally, but some of it had to be handled by, going back to Washington to talk to the people there.

LaBerge: I mean, for instance, did you have someone who represented your interests at Congress?



Reilley: We had an attorney named Northcutt Ely in Washington, and he had people in his office who represented the district in Washington.

LaBerge: And, when you were interpreting the statutes or whatever, were you working with your engineers?

Reilley: Yes, we had a very close relationship with the engineering staff, both on the water side, and in the special district.

### Unionization

LaBerge: I'm trying to see if there are some other federal issues here, but there are some state issues.

Reilley: I think one of things, that--big change in the district as far as internal organization, was the fact that unionization came in. You know, it was, kind of the beginnings of public employee unionizing which occurred while I was there. The statutes from Sacramento provided for unionizing public employees.

There are statutes that require the district, among other public agencies, to meet and confer, as they describe it, in order to reach agreement with their employees. And, we had, I think, it was three strikes while I was there, and we entered into contracts with employees.

LaBerge: So did you both deal with the strikes and the negotiations, or--

Reilley: No. We hired outside people to do the negotiating with the employees. Our contribution was that, once or twice, our office went in and got injunctions against the strikers; it didn't really help all that much because eventually, you have to sit down and agree. It's just a question of sooner or later.

Balancing Environmental Guidelines and the District's Needs

LaBerge: As far as all the environmental guidelines that really were coming out while you were there, that was really the force--I have a broad question for you, what would you see as a good balance between the environmental concerns, and the beneficial use of water?

Reilley: Well, it's like anything else, you know, there has to be a trade off. You can't have the water supply just like it was when nobody was here but the Indians. Besides, it probably wouldn't have been a very good idea to have it the same way because the fact of the matter is, the water supply that comes down the river, for example, the Mokelumne River, in its unregulated state, isn't very good either for domestic use or for anything else, because it comes all at once as the snow melts.

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Reilley: But basically, you know, a lot of the regulations are obviously necessary, particularly when you have the population growing the way it is. There's no doubt the dumping raw sewage into San Francisco Bay, which we did up until right after World War II, when the district started its first interceptor plan, was a disgrace. Anybody who lived here all his life knew that was terrible, the stench of the Bay and so forth. So the environmental restrictions on polluting that Bay, and so on, are obviously necessary. It's particularly true when you have large concentrations of population. Obviously though, you have to have some modification of the demands for fish and recreation because of the needs of the people who need water for domestic and municipal uses, and also for industrial uses. People decry the industrial uses, but on the other hand, they also need jobs.

So there has to be a kind of balancing act, and what really is upsetting is the people who are fanatics, who won't accept that fact that you have to make some kind of compromises, and you can't have it all your own way. The people, for example, on the American River who say, we've got to have this--fish is the prime thing. They forget that there wouldn't be a regulated supply, a year-around supply on the American River, if there weren't dams upstream, and the water, in effect, was being regulated. So that would be my only comment.

I think a great deal of the regulations and requirements are necessary because we've got a lot of people in this state, and we can't just let people run wild because there's no doubt that there's a lot of people that would asphalt--that would concrete

over the entire state if they had their way. We have a beautiful state here, and a beautiful Bay Area. We should try to keep it that way as long as we can. But on the other hand, there are some requirements that are necessary to make the place liveable.

LaBerge: One time you let me look at a resolution that the district gave you when you retired. It mentioned various things you worked on, so I just wanted to ask you about some of them.

Reilley: Sure.

#### Land Use Master Plan, 1970

LaBerge: One of them is the Land Use Master Plan in 1970. Do you recall what that was?

Reilley: Yes. The district, of course, owns a great deal of property in the Bay Area in the hills surrounding Upper San Leandro Reservoir, and Chabot, and the Briones Reservoir, and San Pablo Reservoir--at all of those reservoirs the district owns a great deal of property. And of course it owned even more, which it turned over to the regional park district early on. At one time, when I first came, the idea was that the district should try to dispose of a good deal of the property which wasn't necessary for watershed purposes. It acquired the property, a lot of it, when they took over from the old East Bay Water Company, private water company. That led to quite an outcry of people. The first real crunch was in the Orinda area. The district owned a lot of property at the crossroads there which it had no real need for, but is kind of upstream from San Pablo Reservoir there. Of course, it's all developed now. But at that time, there was hardly anything there and the freeway hadn't been developed the way it is now. There was something called a pine grove there which was up on the side of the hill, which is where John F. Kennedy University is now. The district was going to sell this property off. I think some big trucking outfit was going to put a headquarters there. There was a great deal of outcry of the citizens there. William Penn Mott, I think I've mentioned this before--

LaBerge: Yes, yes you did.

Reilley: --was a leader in this. And Frank Newman, lived there, who later became a member of the state supreme court, was a dean of the law school, was a classmate of mine.

LaBerge: Oh, was he?

Reilley: Yes. Just recently died.

LaBerge: Yes, he did. We have an oral history with him.<sup>1</sup>

Reilley: With Newman?

LaBerge: You would enjoy reading it.

Reilley: Yes, I would. Yes, Newman was a classmate of mine. He was below me in the class, by the way [chuckles]. You don't have to add that.

LaBerge: That's good to know.

Reilley: Well, I take a certain amount of pride--I was fifth in the class.

LaBerge: Wow! So Frank Newman was active in this--

Reilley: Yes, he was quite--Newman lived out there, you know, so he was one of those that was active. And then there was a great deal of pressure on the district to allow fishing in the reservoir. The district had its land closed off. It didn't permit anybody in there. Of course, that's all changed now. They have hiking trails, and fishing, and recreation, and you know, the whole gambit. But in those days they didn't allow anybody on the property, and the idea was it was going to be used for drinking water so we kept it as clean as possible. This was, you know, one of the engineers' basic premises.

There was this pressure from an assemblyman by the name of Masterson, from Richmond, who later became a superior court judge, to open up the reservoir for fishing. They had these people that were decrying the district for going to sell off the land and spoil the property. The district decided to call in the Stanford Research Institute, I guess it's called, and make up a land use master plan for the district of the property inside the boundaries. Later on it made one for the up-country property up in Amador and Calaveras Counties, too, but the first one was related to the property inside the district. So the district then declared a moratorium on selling any property at all, which I think basically they held fast to, to this day. I don't think we're supposed to do anything except maybe exchange, or

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<sup>1</sup>Frank C. Newman, Oral History Interview, Conducted 1989 by Carole Hicke, Regional Oral History Office, University of California at Berkeley, for the California State Archives State Government Oral History Program.



something, for a particular operational purpose. But aside from that, I don't think they've sold any property.

This master plan came up and they had formed citizens' committees, and they met with the citizens' committees, and gone over the plan, and eventually arrived at this plan. This plan would be for the use of the district property. Eventually they opened up the reservoirs for fishing, and built hiking trails, all that. Over the years, of course, they've been more and more used. Lake Chabot, of course, they leased to the regional park district. There's Willow Park golf course there. San Pablo, of course, is open for fishing. Then Lafayette Reservoir is also used for recreational purposes. [The Willow Park golf course caused a great deal of problems for the district. Upper San Leandro Dam discharges into a creek which flows through the course. When there is heavy rain, the dam discharges into the creek and the course is flooded. The operator of the course would then sue the district although the course is supposed to absolve the district from such liability.]<sup>1</sup>

LaBerge: So did you help write the master plan?

Reilley: Well, the master plan was prepared by Stanford Research, the basic plan. But of course, then we participated in such amendments and changes and so on that would take place. We had, again, Frank Howard in my office, who took kind of a lead in that and worked with the citizens' committees, and so forth.

#### Water Management Plan, 1972

LaBerge: Another one they mention was the Water Management Plan in 1972.

Reilley: Yes. Well, that of course grew out of plans for utilizing the American River water supply, because that was entered into in 1970. We had the contract with the bureau, and then they had to draw what in effect was a kind of an action plan for how all of this was to be integrated into the district system.

LaBerge: So it was really just an outgrowth of the American River negotiations?

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<sup>1</sup>Bracketed material was added by Mr. Reilley during the editing process.



Reilley: Right. It was basically a blueprint for the augmentation of the district's water supply. It has been upgraded several times since.

Water Rights Review Commission, 1977

LaBerge: Something else I came across was a Water Rights Review Commission that Governor Jerry Brown set up in 1977, and Chief Justice Donald Wright, I guess, who was retired, was the head of that? I didn't know if you had any input into that.

Reilley: Yes, I do remember that.

LaBerge: Maybe to spark your memory I brought pictures of the other commissioners. I thought maybe you'd look at them and either remember if you had to testify or if you had any part in any of that. [Showing photos].

Reilley: Yes, I remember they came up with this [from *Western Water*, July-August 1977, published by Western Water Education Foundation.] Art [Arthur] Littleworth was the one that was hired by the district.

LaBerge: Okay. He keeps writing. He's published something in 1994 on California water law.

Reilley: Yes, he's quite a recognized figure, although I guess he's kind of in semi-retirement now. Yes, I remember this commission and I remember we had a hearing on it. The Association of California Water Agencies, I remember, met after this and had a meeting, discussed some of the findings of these people. I remember I appeared at that and gave a talk at that, too. I remember I wasn't happy with some of their findings but I can't remember why now [chuckles].

LaBerge: I jotted down a few of their findings. Harrison Dunning, I guess was the--

Reilley: I am familiar with Harrison Dunning, from Davis.

LaBerge: It sounded like he directed the commission.

Reilley: He was a professor at [University of California,] Davis, and he specialized in water law. I think he was at the law school there. I remember him because he came down and appeared before our board on one occasion about something which I didn't agree

with, but yes, I remember that. I remember that meeting too, the Association of California Water Agencies, and I remember that Justice [James] Cobey was there and gave a talk. I remember we didn't agree with each other.

LaBerge: I assume it was kind of an aftermath of the drought, that that's why the commission was set up?

Reilley: Maybe that's true.

LaBerge: Because it was 1977.

Reilley: That would be true, right.

LaBerge: But they said one of the recommendations was that they'd have a state local regulatory program designed to reduce ground water overdraft, and to preserve instream flows to facilitate the transfer of water, and water rights.

Reilley: Right. Yes. John Bryson, I remember him, too, because John Bryson, is now, I guess, the chief executive officer of Southern California Edison. But at that time he was chairman of the State Water Resources Control Board, and then before that, when I first ran across him, he was a witness in the hearings that the state water resources board was having on the Bureau of Reclamation's application for water rights for the American River project. Then he was a big environmentalist. And now, of course, he's, I guess, with the enemy. Yes, I remember him, John Bryson, of course. And Thomas Zuckerman was a prominent lawyer quite active up in the Delta, from Stockton. Zuckerman--the Zuckermans are a very well-known family up in Stockton, of course. Another relative of his we came across was a man named Zuckerman who was a farmer.

LaBerge: I think you told me about Joe Zuckerman?

Reilley: He had a warehouse.

LaBerge: Yes, I wondered if they were related.

Reilley: Yes, the Zuckermans are a well-known family. I don't know the exact relationship between the two. This Zuckerman here, this Thomas Zuckerman was quite an active lawyer involved in water rights matters up in the Stockton Delta area.

Issues of the 1976-1977 Drought

LaBerge: I wondered if they asked for input from you or from other water districts.

Reilley: I don't remember. Of course, I remember the drought. There was a lot of action with ourselves and the bureau and the state because of--. We had water, enough--we had quite a program of restrictions on water uses during that time. We had ordinances that we had to draft and restrictions on people's uses of water, and exactly how much they can use. That was quite a contentious thing at one time, before it was adopted, because there was a question as to whether you would base the water use on a percentage of their previous use, or whether you would fix an amount of water and say, so many gallons a day can be used in the household.

Now everybody on the west side of the hill said, "Let's be fair, everybody will have 250 gallons a day." Everybody out in Contra Costa County says, "Oh my god, I've got a half-acre of petunias, and whatever, azaleas, and they're all going to die, you know, and it's hot out here, you have to take a shower every couple of hours." So we had a big dispute over that. And finally they came down on the side of having a fixed amount of water. They had big public hearings on this down at the Kaiser Center. People got pretty hot under the collar about this.

But in the meantime, the question was, in some areas like Marin County it wasn't a question of whether you'd take a shower, it's whether you'd get a drink of water. They were almost out of water. So we had water rights available still from, of course, from the American River. The contract said you had to take from Grant Line Road, off the Folsom South Canal. But we had the ability to take water from a place called Bixler which is right next to our aqueduct in the Delta, which we could pump out of the Delta if the bureau would release water down the river, we could pick it up, put it in our aqueduct.

But we had to negotiate with the bureau in order to get them to let us do that because they could have said, no, the only place you can take it is at Grant Line Road, which meant you couldn't take it at all. So we went up there with Harnett and haggled around with them, and they didn't want to give us--they only wanted to give us a small percentage of the water. To make a long story short, we haggled over that and finally got them to permit us to take water out of that. So then the state--we got together with a lot of the other people up in the state and

reached an agreement whereby we would take this water out of the Delta, put it into our aqueducts.

We would then in turn take water, state water [State Water Project water], at a connection near Hayward. We would make a connection there with state water, and theoretically, that water would come through our system and we'd build a pipeline across the Richmond-San Rafael Bridge and we would sell water to Marin County and bail them out. Then, we would put a connection out here in Contra Costa County, and we would deliver some water to them so that they would tend--they could take it out of the Delta of course, but it would be very salty. So we would deliver some district water to them to clean that up. So we had all of these kind of deals with the state to take water in Hayward, deliver water over to Marin and our agreement with Marin, we had a water deal with Contra Costa County to deliver water to them, and then we had the bureau to supplement our water supply with water out in the Delta. During this time we were meeting with all these people and trying to get by that terrible drought. Bob Maddow, in our office, negotiated a lot of these agreements.

LaBerge: I'm impressed that the East Bay district was trying to help its own customers but also trying to help other people who were without water.

Reilley: Well, you know, it's like you're sitting in the middle of a parking lot with a lot of starving kids all around you while you're wolfing down a hot dog. Yeah, you can't really, in good conscience, just simply sit there and do nothing.

LaBerge: That's right. So then when the drought was finished then you no longer pumped water to Marin.

Reilley: No, actually, we took out that pipe and we, of course, disconnected the different connections for the systems. We also delivered water--I don't know, maybe they still deliver water down--this was under Jerry Gilbert--down into, I guess it's Byron. They were out of water. Public health people condemned their water supply. They were taking water out of wells.

### Tax Issues

LaBerge: Well, the other thing I found, after that commission made recommendations but the legislature didn't act on them, there was Proposition 13 [1982]--not the property tax initiative but it was a water resources initiative that failed. From what I read about



it the majority of water agencies were against it. Do you have any recollection of this one?

Reilley: I really don't have any recollection.

LaBerge: It was sort of when you were ending your job at the East Bay in any case. Okay. Speaking of the other Proposition 13 [1978], what kind of tax issues did you have to deal with?

Reilley: Well, of course, the district used to levy its own tax, you know, and the district's board would fix a tax rate. But then of course, after 13, why then the county would allocate a certain percentage of taxes to the district which, in effect, are for the purposes of covering bond issues--outstanding bond issues. But it's gradually taking less and less from the tax rate.

There is now and was then, too, a movement, by the cities and counties and probably a good part of the legislature, to remove the right of outfits like the district to levy any taxes at all. The pressure, of course, a lot of it was motivated because of the fact that Proposition 13 had made cities and counties and school districts pretty desperate for money. So I don't know how much longer outfits like the district, which are revenue producing, will be able to levy any taxes at all. It's become less and less of a factor for the district. Of course, in the beginning, when they had a lot of construction costs it was an important factor to be able to issue bonds and pay them off with taxes.

This is interesting [looking at photograph].

LaBerge: Isn't it? I thought that both you would get a kick out of seeing the pictures but you probably knew every single person on that commission.

Reilley: Yes, I do know them all. Right. Arliss Ungar was a lady from out here in Contra Costa and was very active in water matters. But I think she took off for some place with her husband. I think he had a job someplace else. She was very active. Ron Robie here. Thanks, it's very interesting.

#### Various Professional Organizations

LaBerge: [Looking at another photo] You might know this group, Western Water Education Foundation. Our office gets this pamphlet sometimes.



Reilley: I do know them. It's run by a lady who is very active. I think she was a farmer's daughter or a farmer's wife, or something like that, I think she was connected with farming. They started up this water news because of the--well, as kind of a counterweight to the fish and recreation type people, who are environmental types, who don't want to use water for, basically, for farming I guess, more than anything. I think that they alone with, say the Association of California Water Agencies, have been very active in trying to put their message across.

LaBerge: So I guess it's been going on since--

Reilley: Yeah, that's been going on for quite a few years. Yeah, that was a fairly active group.

LaBerge: Now what other groups did you belong to--you mentioned the Association of California--

Reilley: --Water Agencies. Yes. And I was in the California Municipal Utilities Association [C.M.U.A.].

LaBerge: Okay.

##

LaBerge: Okay, so you were the attorney for--

Reilley: California Municipal Utilities Association. I was also chairman of their legislative committee.

LaBerge: Oh--which would lobby the legislature?

Reilley: Yes. Well, basically, what we did--because they had an executive director who did the actual lobbying [with the legislative committee]--we would meet frequently, once a month I guess, pretty much, in which we would go over the proposed legislation which would affect municipally-owned utilities, both water and electric. And we would then--there would be a meeting of the different representatives from the different agencies throughout the state, and we would decide whether we were going to take a position on those pieces of the legislation and direct the executive to either support them or oppose them or seek amendments.

LaBerge: Would all the attorneys for the East Bay district have belonged to this--like did Mr. Raines belong to it before you or is this just something that you were interested in?

Reilley: I'm not sure that Hal participated in that. It may well be that I was the representative on this when Hal was there. Although it may be that Hal took part, I can't remember that. But I was quite active when I was there and when Harnett was there.

LaBerge: Well, the other one was the I.D.A.?

Reilley: Well, the Irrigation District Association turned out to be the Association of California Water Agencies.

LaBerge: Oh, okay, so it just transformed--

Reilley: It just changed the name because they wanted to have a broader base. Surprisingly enough that created quite a furor because the old-time farmers and irrigators and so on, they loved that idea of that Irrigation District Association. It had a great history, you know, over years protected their interests, and they viewed with a certain amount of suspicion people like ourselves who were municipal water suppliers. In some cases the positions were somewhat in conflict.

So the idea was they wanted the people who were running, kind of the executive, wanted to change to broaden it out to get us in like Los Angeles and East Bay and San Francisco and all the rest--all the water suppliers, if for no other reason than we have a lot of money. They could charge us more dues based on the amount of water that we were using. And also, to be fair, they felt that people in the water business ought to speak with one voice, if they could. So there, after a great deal of turmoil, they changed the name to Association of California Water Agencies. They changed the way the representation on the board were elected and so on, to give the municipal water people a little more say in the organization because they were getting a lot of flack from the people who were paying the bill, or a lot of the bill, and who were not--they had the feeling that they weren't getting as much for their money as they should. So, that was kind of the history of the change from Irrigation District, to the Association of California Water Agencies.

LaBerge: Was their purpose similar to the California Municipal Utilities Association? I mean that you were representing water interests--

Reilley: It wasn't directed to water precisely; it was directed more towards public agencies as they function as public bodies. A lot of it would have to do with, say, taxation, or rates, or zoning, or planning, or things of that sort that went beyond simply a question of water.

Now, some of things would be concerned with water, but then a lot of them were concerned too with, say, how an electric utility would operate. And it had to do with how your board was organized, or labor matters, or things of that type. But of course, a lot of times they would be in concert together, the two associations would have a similar position on something, whether for or against.

### Urban Water Management Planning Act, 1983

LaBerge: I read that you helped to write the Urban Water Management Planning Act, 1983.<sup>1</sup> Can you tell me about that?

Reilley: Well, as you can see from what you've been reading there about the commission, there has been a gradual impact on water users-- that they use better planning and that they don't waste water. It had a relationship with the lawsuit we had on the American River. There was a great push in the legislature around this time, that would have a kind of a czar of water to determine--to tell people throughout the state how they should use their water and how much water they could use, and so forth.

Jerry Gilbert had the thought of having the requirement of not a water czar, but to each water agency that uses a certain amount of water, a significant amount, would be required to provide a management plan that would show that it was utilizing its water supply and attempting to get a future water supply in a most effective way. It was kind of like a counterpart to an environmental impact report. It would show that you weren't just saying, well, we need a lot of water, let's go out and get it and start using it, so that you would have to determine alternative ways to supply your needs, whether by ground water or conservation, so that when you went out and got additional water supply it would definitely be demonstrated that there was a need for it and that it couldn't be supplied in some other fashion. Jerry had those ideas, and so I put them into a draft form and drafted it up and we got it through the legislature.

LaBerge: Wow! Who helped you get it through the legislature?

Reilley: We, of course, had a representative in Sacramento for the district, Rod Franz. Rod's an Old Blue, you know, he's a famous member of the Hall of Fame, a football player, you know.

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<sup>1</sup>A.B. 797, 1983-1984 Reg. Sess., Cal. Stat., ch. 1009.

LaBerge: Oh, I didn't realize that.

Reilley: Oh yes, Rod's a great man, he's a great fellow. Rod is retired now, but he was the district's representative in Sacramento for quite a few years. Of course he worked on it, and of course a number of different water agencies recognized that we needed something that would demonstrate that we weren't just a bunch of dinosaurs out there trying to get water but that we were truly trying to utilize good planning to do it. So I think we had the support of most people in the water business.

LaBerge: I was wondering if specific legislators introduced the bill for you or were more friendly than others?

Reilley: I can't remember who was--I think [Assemblyman Ralph] Klehs. I have a picture of the governor signing it.

LaBerge: Oh, do you?

Reilley: Yes.

LaBerge: Oh good, because I wanted to ask you about photos, if you had a couple of photos that we could use to put in the volume.

Reilley: Yes, I have a photo of that. [Tape pause to find photo]

LaBerge: About what year was this, just approximately?

Reilley: Well, I would say that probably it's about 1984.

Okay, this is Rod Franz. This is Jim Lattie, who was the P.R. man in charge of our public relations department. This is Jerry Gilbert. This is Sandy Skaggs, president of our board. Here's the governor, and here's Klehs who introduced the legislation.

LaBerge: That would be a wonderful picture to have in the volume.

Reilley: That's 1984, that's--

LaBerge: That's after you retired I guess. I'm just going to read this for the tape. To Jack Reilley, Congratulations on your retirement and on drafting the first California Water Conservation Act. Best regards, George Deukmejian, 2-23-84.

Reilley: Right. I graduated--[laughter]--

LaBerge: You retired--your second graduation!



Reilley: I retired in December of '83.

LaBerge: Oh, that's a great photo. Well, that's quite an accomplishment, also just as you retired to have finished that.

Reilley: Right, right, right.

LaBerge: I just want to glance over this. Are there any issues you think we have not covered from your time with the district, or about water law in general?

Reilley: Well, I think we covered most of them. Just trying to think--no, I think--

LaBerge: --covered most of them?

Reilley: --pretty well covered, yes.

#### Change in Water Law over the Years

LaBerge: What did you see as the major changes in water law in all your years working in that business?

Reilley: Oh, there's been a great deal of change. When I first started with the district, basically, water was for use in either agriculture or municipal supply. The environmental people, fish people, were kind of on the outside of the issue, and there was some--I can't say that they were disregarded. But, if it came to a showdown between uses of water for municipal purposes or for agriculture, that was going to win out. Of course, when they built Pardee I'm sure there was hardly any thought about, well, what's the effect of this on downstream fishery.

LaBerge: Yes.

Reilley: There were a lot of problems and controversies about uses, other uses of water for agriculture or for municipal. The City of Lodi's municipal supply, and the PG&E for the effect of the district's diversions on their power plants, and that sort of thing. But, as far as the thought for, is this going to affect the fishery, I'm sure there was very little thought given to that. You started to see more of that when we got into Camanche. Then there started to be more of a formal hearing type process before the state water board. It wasn't something that you just went up there and made an application and somebody gave you a permit. You had to have a public hearing and the fishery people,



and the recreational people as well as the other water users, the farmer and the irrigation districts, and the rest of them, were in there fighting it out. But still I have the feeling that as far as the water board was concerned, if it came to a showdown between fishery and use for municipal or agricultural purposes, the agricultural purposes and the municipal people were going to win out.

But then, as we got into the American River thing, it turned the other way. I mean, I think that, by and large, the environmental issues weigh heavier than the water use purposes. They are very, very much into the picture, and very, very determinative of how the issue is going to come out.

So, you could see a whole spectrum from the days of Pardee to the days of the American River project, and you could almost chart the public reaction and the approach to water development between those two projects. Of course, not only the people in Sacramento and Washington are concerned, but they're responding to a public concern. I think the public is really now the moving force because--you know, the old story used to be, "the way water runs, it runs to where the money is," and I don't think that's quite true anymore. Of course, to some degree that features into it but not nearly as much as it once did. The impact of the environmental movement on water development has been tremendous. I think, by in large, all to the good.

LaBerge: Well, I'm just going to say, thank you very much and close off the tape.

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