

DAVID GETCHES

PS: Today is October 11, 2006. We're here in Boulder, Colorado, at the Wolf Law Building to do an oral history interview for the Colorado River Water Users Association. I'm Pam Stevenson doing the interview and our videographer is Bill Stevenson. I'd like to let you introduce yourself.

DG: I'm David Getches.

PS: We always like to start with a little general background about you personally starting with when and where were you born?

DG: I was born on August 17, 1942 in Pennsylvania.

PS: Did you grow up in Pennsylvania?

DG: I grew up mostly in California, having moved there at the age of 10, to southern California which was exploding with growth in the 1950s.

PS: What did your parents do?

DG: My father was an inspector for doing fire insurance rating. They decided to move to a better place after shivering. At the time they were moving, they lived in upstate New York, outside Buffalo. It was an inhospitable place. So they decided to move to California. They packed up everything, two kids with chicken pox, a Collie dog, and drove about this time of year in 1951 to California.

PS: What did you think of California as a boy arriving there?

DG: I'm not sure I have clear memories of arriving there at that age, but the impressions at that time as a small child was that it was a wonderful place, a

warm and pleasant place. Perhaps my parents were exhilarated by being there, even though my father didn't have a job at that point. It seemed like a land of opportunity.

PS: So you went to school there?

DG: I went all the way through high school and then I attended Occidental College in Los Angeles and went on to law school at University of Southern California.

PS: As a boy, what were your thoughts about what you were going to do when you grew up?

DG: I'm not sure how much of these were my original thoughts, or how much were planted by my mother during my upbringing. I had the idea in high school that I would be a lawyer or a teacher and ended up becoming a little of each.

PS: Do you think that was your mother's idea?

DG: I think she encouraged me along those lines, even though she didn't know any lawyers.

PS: So you must have been a good student?

DG: I was a good student.

PS: Where did you go to high school?

DG: I went to West Covina High School.

PS: Did you know any lawyers?

DG: No, I never met a lawyer until I was in Boy Scouts and did a Career Day and spent a very boring day with a lawyer. I wish I could claim a more visionary path, but that's what it was. My mother was widowed and she depended on me a lot, and I depended on her to tell me what to do, I guess. I dutifully went off and tried to pursue an education, something she never had, and to find something useful to do that ended up interesting me a lot.

PS: You lost your father as a boy? That must have been a hard time.

DG: Yes, it was a hard time. It was hard for my mother, and for my sister and me. I was looked to, as an early teenaged kid, to be the man of the family.

PS: That influences people a lot. I've interviewed a lot of people who grew up without fathers, and it makes a big difference in their lives.

DG: Yeah, I think it does.

PS: When you got out of high school, how did you choose Occidental?

DG: When I got out of high school, I went right to Occidental. Straight career path. I was working a lot.

PS: You were able to afford to go to Occidental, with your mother being a widow?

DG: I had a full scholarship and I worked two or three jobs. She wasn't able to help out. She was working in El Monte, California at that point as a secretary for \$300 a month.

PS: How did you make the decision to be a lawyer? Could have just been a teacher, I guess?

DG: Well, that was a ways down the line. I got out of law school, went into practice in San Diego with a large law firm. After a short time in that practice, I helped begin a program known as California Indian Legal Services, which now has field offices all over California. It was part of the Johnson Poverty War, OEO program. The legal services program that we were getting started at that point served Indians and Indian tribes throughout the state of California. We opened the first field office which was in Escondido.

PS: What year was that?

DG: That was 1969.

PS: Once you got out of college, why did you go to law school instead of just being a teacher?

DG: I wanted to be a lawyer at that point. I decided that would be an appropriate thing to do. Finished college just a little early. I was working by accelerating my schedule to make a little money. Some of my friends were going to law school. It fit with interests that I genuinely had in college, in political science and that general area.

PS: What was your college major?

DG: It was political science.

PS: And those were pretty political years.

DG: They were very political years. I wasn't very engaged in college or law school. I was always interested in it, worked in campaigns. I was married in law school and, as soon as I graduated, my wife and I moved into what could properly be called the ghetto in Los Angeles. We found ourselves the only white people in the neighborhood, and the Watts riots broke out. It was an influential force in my political maturity and opened my eyes to aspects in our society that I hadn't really appreciated, and it made me much more concerned about social justice than I had ever been before. I think I've remained on that course and I attribute it primarily to that. Also, my mother and my parents generally were socially engaged in the community even though they had come up from poverty themselves. They were kind of hard-edged Republicans. You can make it yourself. You've got to have gumption. People don't need help. I saw it a little differently after being in this law school experience, the living experience not the educational one.

PS: USC is kind of in that area.

DG: Yes, very much so. It's very downtown and surrounded by what was the curfew area during the riots.

PS: Always interesting to find yourself as a minority. A different perspective.

DG: But with very sympathetic neighbors.

PS: Could have been a dangerous place to be too.

DG: We didn't feel any danger. It could have been.

PS: Why did you choose USC as the law school?

DG: I had to choose between USC and a couple of other law schools, and I chose in part because it was close to my family and my wife's family.

PS: What were your goals after law school? Did you have a plan?

DG: I did not have a plan. I dutifully interviewed on campus with the best and biggest law firms to try to get a job, and I did get such a job. I was moved, at that point, toward the job that good students gravitated to. It was a law firm called Luce, Forward, Hamilton and Scripps in San Diego.

PS: What sort of law were you doing?

DG: I split my time between corporate and litigation, not knowing what I wanted to go into. I ended up working on cases that were for the benefit of the local department store, utility, insurance companies who we represented. Most of the big established interests were represented by that law firm. It's one of the oldest in the state of California and a very successful one. I learned a lot there but I didn't stay long.

PS: Why was that?

DG: I had worked a lot of jobs, everything from working the graveyard shift for the Bank of America in their first computer processing center, to digging ditches, to running a jackhammer. This was the first boring job I ever had.

PS: How long did it take you to decide it was boring?

DG: I didn't really admit that to myself, but I realized one morning when I was reading the paper about some lawyers representing some Indians in northern California in a water dispute. That's something lawyers can do

that really sounds fascinating and I juxtaposed that to what I was doing, which was playing second or third chair in a case to defend the interests of an insurance company or helping the local bank president in his dispute with a guy who fixed his Jeep that he took out in the desert on the weekend to play around and wanted to muscle him down, and I was the lawyer doing that. It just didn't strike me as what I wanted to do the rest of my life, notwithstanding the fact I knew I would make a healthy living.

PS: How did you go about making a change?

DG: I wrote away to those lawyers whose story I saw in the Los Angeles Times that day and asked them if they had any jobs. I got paged out of the library where young associates at that law firm typically hung out and spent their days doing research. It was one of those lawyers saying if you got our letter, disregard it. But I hadn't gotten their letter, so I probed, and they said we told you there's no job, but we've just decided to apply for an OEO grant to start an exclusively Indian law program. This was California Rural Legal Assistants (CRLA), which is famous for its work on behalf of migrant workers in the farms in California and the particular office in Santa Rosa represented Indians. They decided to spin off an Indian program; subsequently, they were able to do that so I hung in there for several months. I started doing some cases on the side for those lawyers in southern California who had an avalanche of Indian work, and needed this special program. We got the funding for the program and I proceeded to open the first field office in Escondido and left the law firm.

PS: You don't think of Indian law in California that much. At least I don't.

DG: It's one of the places where Indian law has developed very strongly, and it was in part because there are dozens and dozens of tribes, most of them landless, or nearly so. I think the nearly so is the most accurate part of

that statement. Only a few have no land whatsoever, but many of them have just a tiny little vestige of their former land base and, more recently, since the work we were doing in the 60s and early 70s through California Indian Legal Services, there's been a growth industry and the related gaming area.

PS: You were kind of ahead of your time in the Indian area.

DG: It was early for being into Indian law. There weren't many people in the field at that time.

PS: How long did you stay with that?

DG: From there, we started doing some cases outside California, which we really weren't supposed to do. We were advising other lawyers, and actually getting involved as lawyers in cases because there was a dearth of people who had any knowledge of Indian law. I look back at how little knowledge I had. I realize that we were only one tiny step ahead of the people we were helping, but there was clearly a demand outside California for this kind of work. We were approached by the Ford Foundation. They suggested that they might be interested in funding a national program with a professor then at UCLA, Monroe Price. We were able to put together a proposal for a national program, that was eventually funded by Ford and then joined in by several other non-profit funding sources, typically private foundations, not government. That program became the Native American Rights Fund. I stayed in Escondido long enough to do many, many cases there, not boring at all. Then to help get this proposal together after we got a seed grant, we moved temporarily to Berkeley to get it started. Then figured that we needed a place that had greater geographical neutrality from California and centrality to the rest of Indian country and, by a look at the map, relatively uninformed by ever having been in any of

these places, it appeared that Colorado was one of the best places. Almost by triangulation on the map, chose Colorado.

PS: When did you move here?

DG: Moved here in 1971.

PS: And you moved here for the Indian rights?

DG: Yes, we moved here to set up the Native American Rights Fund right down the street here.

PS: So what was there about the Indian rights issue that you were involved in?

DG: One of the cases that I took for the California Rural Legal Assistance, later California Indian Legal Services, was a case involving water on an Indian allotment in southern California, so from the start, I was involved in natural resources and water. That was a consistent theme throughout. My sidekick in the Escondido office, Robert Pelcyger, took on the representation of the San Luis Rey tribes throughout San Diego County and also one of the out of state cases, the Pyramid Lake tribe litigation in Nevada. So I was involved as an assistant to him on those cases, and as the lead on the Indian allotment case. We were doing quite a bit of water, but we did everything related to Indian representation that two guys could do, who were relatively inexperienced.

PS: So were you here alone in setting up this office?

DG: I did set it up alone, but later on, early in the process, had a VISTA volunteer to help me, and hired a secretary. Pelcyger joined me shortly thereafter from UCLA where he was working with Monroe Price.

PS: You continued to get involved then with Native American issues and water issues simultaneously?

DG: Yes, they were typically Indian water issues, and other Indian issues, fishing rights, land rights in Alaska, education in New Mexico.

PS: How did you get more involved with some of the Colorado water issues then? Was that through the Native Americans?

DG: The Native American Rights Fund was biggest in Colorado and had very few cases in Colorado. Our cases were all over the country, from Maine to Alaska. The identity of the clients and the type of legal cases was what got us involved, not the geographical location, but to anticipate your question, how did I then get more involved in water, what happened was I eventually left Native American Rights Fund and started in a small private practice with Bruce Green, who had left Native American Rights Fund and had also been at California Indian Legal Services at a different time that I was. We started an Indian-based practice in Boulder but I immediately started teaching Indian law and later other natural resources courses, as the expert here at the University of Colorado had left for another law school. They needed someone. I eventually got his position after teaching part-time for a very short while. I taught and wrote in the area of water. It was of great interest to me. I had some background in it, and wrote about western water law and particularly about the Colorado River.

PS: Since you were right here, I guess that made a lot of sense.

DG: It did make a lot of sense, and it was something that I thought was very important for the state and for the west, but also very exciting intellectually.

PS: What year was that that you took the position here at the law school?

DG: 1978.

PS: So have you been here pretty much straight through since then? I noticed that you had a couple of leaves of absence that you did some other things.

DG: That's right. When I left Native American Rights Fund, stepped down as executive director and went into this private practice, all of that happened in a period of a couple of years from '77 to '78. Then I started my full-time work here and have been here continuously except for nearly four years when I served in the Lamm administration as the Director of the Department of Natural Resources. I've been gone for one sabbatical year in that time as well.

PS: Why did you take that position?

DG: I got a phone call one Friday afternoon from Roy Romer. I, of course, knew who he was, but he identified himself as the Governor's Chief of Staff. Now he was elected State Treasurer, but he said to the newspapers that State Treasurer isn't a full-time job, so he took on the Chief of Staff job for Governor Lamm as well. He was looking for a new Director for the Department of Natural Resources, and I guess a lot of people he had talked to had mentioned my name as a possibility. I did, in fact, show some interest in that. I called former heads of the Department of Natural Resources, a couple of whom I knew personally and asked them about the job, Bonnie Pascoe, now deceased, and Harris Sherman, and they told me about the job and it sounded fascinating, tantalizing. I've always been interested in public policy and had certainly research written about many of the issues, so I went and met Romer for breakfast the next

morning, and he and I were both enthusiastic about the possibilities. After a couple of interviews with Dick Lamm, he gave me the job. I told him that I couldn't start when he wanted me to, because I had a trip planned to go down the Colorado River. I told him I could cancel that, but I had been planning on doing that with my son. This was 1983. He insisted that I take the trip, so I took the budget for the Department of Natural Resources, two bound volumes, in my river bag down the Colorado River with me for three weeks.

PS: What were the issues then in 1983 when you were heading the Department of Natural Resources?

DG: The issues concerning the Colorado River were profound because this was a high flow year. It was the first time there was a significant spill from the Glen Canyon Dam and Lake Powell was overflowing. They were putting flash boards, which consisted of 4x8 sheets of plywood on top of the dam to hold the water back, and this was a big issue. The arrangements between the states have always been somewhat tentative harkening back to the Colorado River Compact and subsequent legislation that talks about water allocation. What do we do in case of a surplus? The case of surplus hadn't been anticipated, and we knew a lot of water would flow to Mexico. There was a huge amount of debate about the details of all this. What do we do with the Salinity Control Program under these conditions? I actually knew a lot about these issues, but not because I'd been involved in them hands on. I had some conversations with people who were heading my ten divisions in the Department of Natural Resources, two of them concern specifically water. Literally, on my way out of town, delaying taking this job to go down the river, I was asking them questions and asking why not on several issues, and finding that either they hadn't considered certain options or that they weren't options really in the politics of the time, the Colorado River being what it is,

a prisoner somewhat of the past and given to doing things the way we've done them, not breaking too much new ground.

PS: Did you find new solutions for some of these issues?

DG: Later on, we proposed some solutions. I came back and as an ex-officio matter found myself on several boards and commissions, many of them dealing with water. I did find that suggestions that were novel such as shutting down the Wellton-Mohawk Project in Arizona instead of spending millions of dollars on salinity control was not an option politically. That in the groundwater area, moving from the Colorado River specifically to Colorado's internal problems, the groundwater was a vexing issue, one of the first ones to land in my lap. The developers really wanted to have a free hand in using groundwater, and there was no law at all in Colorado directly affecting the use of groundwater other than that which was tributary to rivers in the area in and around Denver. That's where it mattered. So we negotiated for some months with the multi-interest group of people who knew groundwater law. I'm not particularly proud of the outcome. I think it's certainly better than what might have been enacted. I know that it is, because the Governor vetoed the first bill to come to his desk. He didn't veto this one. It was better, and it was marginally acceptable and it will have to be revised again. It's just that we didn't have the clout to enact a truly visionary groundwater law. And we didn't have either house, the Legislature, the Governor's party. As he pointed out, you can't veto a state to greatness. The only power he had was the veto. This was in 1984. We were watching what Arizona was doing. He was able, because he wasn't in his third and final term as governor, he had some moral authority, and he also had some political influence in the Legislature which Lamm didn't have, because of the great political division, the imbalance in the Legislature.

PS: Are there any other water issues that you dealt with during that period of time?

DG: There were really quite a few. We were dealing with the issue of conservation and it was a somewhat controversial issue. I got Lamm to make water conservation, water efficiency as we called it, something of a hallmark of his term as chair of the Western Governors Association. We put out a good report on that. I think that was a major step forward. I did speak out a lot. Hesitate to call it a bully pulpit, because you don't have much of a pulpit as the executive director of the Department of Natural Resources, although you do get some press coverage, and I wasn't much of a bully, although some might disagree with that. I talked about water conservation all the time. I talked about planning all the time. I tried to push the envelope on those issues. I think we got people thinking about it. We also got some people's backs up. There was a bit of a backlash there. I got a call early one morning when I had been covered in the paper as saying that every home in Denver should have a water meter. It was a revolutionary statement at the time. The Governor called me up and asked if I wanted to get him impeached. Well, it wasn't ten years later that every home did have a water meter through no act of mine, but it shows how times change and one has to put into context what an era we were operating in. Change wasn't happening fast, and even the suggestion of moderate change was seen as jolting to some interests.

PS: Someone who's never lived in a place that didn't have water a meter, that's just inconceivable.

DG: There were a lot of older neighborhoods in Denver that just had direct hook-up to the water main. The other thing that related to the Colorado River that I tried to get through using what platform I had was that the unwisdom of saying and pursuing an agenda that we must develop our full

compact apportionment relating to the Colorado River Compact apportionment. It didn't make sense to me that just because we might have a legal right to do it that that was a policy and in itself. What are our needs? How do we fulfill our needs? Do we need water to do that? What will it take to get the water to do that? I wanted to ask those questions, which actually seemed like easier questions than asking how do we develop our full compact apportionment, which is physically an engineering matter at that point, certainly is an environmental matter, and most of all, is an economic matter. Very difficult. Recall that this was after Carter had come out with his hit list and effectively ended the big dam era. We didn't realize it then, but that was the end of the big dam era. Carter and his Secretary of Interior, Cecil Andress, and Assistant Secretary of Interior, Guy Martin, who basically said we're not going to do this anymore; it has environmental and economic impacts that are unthinkable. So that was the era we were in. Colorado was in a bit of a backlash with Dick Lamm who was blasting Jimmy Carter over this policy, mind you.

PS: It must have been hard to talk about conservation during those years when there were floods and an excess of water.

DG: Yes and no. There were floods and excesses of water in the Colorado River but, living here, you didn't necessarily feel it. We were in a period of modest development at that point, and there was a continuing quest for water for municipal and industrial purposes. Cities were out looking for water. Some were caught short. We can't expand, because we don't have enough water. Denver always had enough water, because they planned ahead. They were there early on and got enormous water resources. Boulder is well situated for the same reasons. It wasn't as if people were saying it's raining all the time, and we've got plenty of water. That was really in the Colorado River Basin itself. We're on the other side of the mountains and this is where the decisions are made.

PS: Who did you feel at that time, in the Department of Natural Resources, were your allies and the people you worked with?

DG: The Department has always worked closely with water interests. I was seen as something of an outsider to this group. I had written about these subjects. I had written about water conservation and the Colorado River, and I had written about water planning. What I had written wasn't exactly in line with what the large water development interests thought. I think they found I wasn't as dangerous as they might have thought based on some of those writings. Also, they began, during that period, to change. Not as much as they changed subsequently, but they were tentative allies. I found myself working very comfortably with environmental interests, who were not at that point very involved in water matters. They are now. They're very influential. We worked closely with the two Indian tribes in Colorado. I had some existing context that made that comfortable. They were pushing then for the Animas-La Plata Project, which was one of these big projects, the fate of which was in serious doubt. It turns out to be the last one to make it through. Arguably, the Central Utah Project was subsequent to it in getting final approval but I think that the Animas-La Plata comes pretty close to winning the survivor award for big water projects, albeit quite changed. One of the main reasons was they had the Indian connection. They had some very good claims based on their early treaties and agreements, that they had federal reserve water rights, and they had a good claim against the state. They looked pretty good to me, and I knew Indian law and water law. I asked them confidentially if they really wanted this project or was there something else. I wasn't ever enthused about that particular project. It was clunky and had not been designed for Indians. It later emerged, incidentally, as something if you wrapped it in an Indian blanket, it might get through Congress. They insisted through their attorneys and elected leaders that that is what they

wanted so I got behind them and helped them get it through in a form that was more environmentally acceptable.

PS: Some people have said this is the end of big water projects. What do you think actually caused the end of big water projects, or do you see this as the end of it?

DG: I think it was this confluence of negative environmental and economic impacts of the projects. Serious questions about whether projects still on the drawing board made sense. One of the greatest symbols of the end of the big dam era came with the veto of Two Forks, and that happened also during my era of public service. Two Forks being the dam that had been planned for the South Platte River by the city of Denver and several of the suburbs in partnership. The Environmental Protection Agency, under President Bush the first, Bill Reilly, being the then administrator of the EPA, vetoed this project after years and years of planning for the project. It was vetoed largely on environmental grounds. It might have been approved if it had fit a coherent plan for Colorado. But Colorado has traditionally eschewed water planning. The saying is, we have a plan, it's called the prior appropriation doctrine. We have quietly buried that saying in the last few years. While I was beating the drum back then for water planning, it was seen as anathema, but currently to the great credit of the people working in the field now for and with the state, they are proceeding with planning. It's done on a regional basis, which is a good way to do it. I think one might have designed it a little differently, but I commend them for going ahead with it. At any rate, at that point there was no plan and when the Colonel came to me as the director of the Department of Natural Resources, and said what's your plan, how does Two Forks fit into this? I said our plan is the prior appropriation doctrine. We don't really have a plan. I tried to give him the party line, packaged as well as I could. But the fact is we had no plan. So we couldn't show him how it all made sense

and it ended up that the Bush administration literally blew us out of the water and we didn't get Two Forks. I think it was a good decision not to have Two Forks. Clearly, the decision was something I was never behind at all and I was just trying to represent the interests of the state and answer questions directly. The Governor had pledged to support it, because he had led a collaborative process that brought people together that resulted in Denver and the suburbs proceeding with the plan.

PS: What was it that you didn't like about it?

DG: One, the demand for water seemed overstated. I think it's proved to have been overstated even with the meteoric grow that we've experienced in very recent years. Two, there were alternatives for getting the water that would not have required this large dam. And three, the environmental impacts of the dam were huge. It floods a beautiful valley above Deckers, if you know where that is, and the mountains outside Denver, the land that it took, the wildlife habitat that it would take, inefficiency of its operation, all argued for a different alternative. I think the alternatives we'll see in the future are groundwater replenishment , conservation, smaller facilities to allow use and reuse of water. The wisdom of the veto in pulling back on that plan has been reproved.

PS: Even though you had to support it politically, you personally were not supporting it?

DG: I was not really even supporting it politically, and certainly wasn't supporting it personally. I was just acting as a neutral agent answering the questions. The Governor was not actively supporting it, but neither were we actively opposing it. It was actually vetoed after we had left office, under Romer's term.

PS: Were there any other big issues during those four years?

DG: We've covered most of the big issues, I think, that dealt with water.

PS: Looking back, are you glad you took that position?

DG: I loved that job. It was really wonderful to be involved in those issues as much as I could be. The Governor gave me almost free rein, which it was a little too bad that he was as disengaged as he was at that point. He was a lame duck governor. He was focusing on health care. He had national platform. That gave me license but it didn't give a lot of momentum to initiatives that we might have undertaken.

PS: So after your term there was up, you came back here?

DG: I came back here to the law school and began teaching again. Actually, I had been teaching part-time in the evenings from time to time and continued my writing in the field of water and natural resources, and wrote more about the Colorado River.

PS: What are some of the major things that you've written about the Colorado River?

DG: One whose day may still come posits that we ought to have a new institution for the Colorado River, a way to make decisions that brings multiple interests together. Those interests would include the states, water users, power generating interests, environmentalists, Indian tribes, everybody who is affected by these water decisions. Now the Secretary of Interior has enormous powers, doesn't exercise them very decisively, and the states have a great influence. Secretaries have traditionally let the states go squabble and if they can agree on anything, to come forward

and the Secretary will rubber stamp it. In recent years, Babbitt, and to a greater extent, Norton, have insisted that the states meet certain standards and barely crossed the bar in each case. And even as the bar was lowered, they would drag their feet more. They have not behaved well in terms of stepping forward to finding solutions to Colorado River problems. The individuals involved, I think, were all there in good faith, and they were trying, but there's this tradition of not giving up anything at the bargaining table. Great study for negotiation and dispute resolution.

PS: You've written primarily legal journal papers?

DG: They're mostly scholarly papers and articles, the occasional op ed or semi-popular piece.

PS: I saw you'd written something called Water I in a Nutshell?

DG: That's sort of a basic source for people to learn their way through water law.

PS: Did you continue to be involved with Indian water rights?

DG: I've continued to speak in that area, write some things, certainly inextricably connected with the Colorado River work. Indian tribes have huge demands on the Colorado River, some of them quantified, a large amount of them not quantified.

PS: I know in Arizona their water rights are from the Salt River and Gila River, but they're being paid back with Colorado River water. Have you gotten involved in any of those kinds of issues?

DG: I've written about that in some of these articles, some of them are just on Indian water rights, some are part of the Colorado River work. I've done a little consulting with tribes, teaching to them what their rights are or might be and how they ought to deal with it.

PS: In Colorado, the new interests are recreation and environment issues, but in Arizona, it's the Indians and they're the new players at the table.

DG: They are, and I question whether they are really at the table. They've had a number of settlements that have etched away at the total store of Colorado River water that is available for other people, but when large policy decisions are made, Indian tribes are not at the table. Environmentalists are jumping around trying to see over the windowsill outside the rooms where the decisions are made. We still don't have a multi-interest decision making process, and I think that's what's lacking. It's messy and it's time-consuming, but in this process of trying to work out sustainable solutions, you either pay now or you pay later. It's better, in my view, to have the cumbersome decision-making process that ends up with something that sticks rather than having a clumsy and inconclusive process that comes out with some decisions that first of all, don't advance the ball very far, but secondly, are subject to challenge later because they didn't consider there's some endangered species there, or we didn't consider the Indian tribes; they've got a claim that's as big as two states put together.

PS: How do you think those groups could be brought into the process?

DG: It could be done with legislation but I don't think you need to throw out the Colorado River Compact or the Upper Basin Compact. I don't think you need to throw out any of the legislation, but you have to implement this body of law in a way that's more flexible and interest considering. The

way you get to that institution is either through federal legislation or through the Secretary saying I'm the czar of the River, which is pretty close to true for the Secretary of Interior and I hereby delegate my authority to this Commission. And make up a multi-interest commission, charge them. Of course, you'd have to give them oversight and you'd have to give them a budget for technical assistance, assign some of the great people in the federal government who are technically very competent to guide the way. But we're a long way from that. We're no closer than when I wrote an article about that 10-12 years ago.

PS: So you're saying not to reopen the Compact and renegotiate it?

DG: No, I don't think we need to do that. But we need to figure out how to implement it and how to interpret it. We need to figure out when to declare a truce and not challenge a decision legally because we say it's inconsistent with the Compact or some other aspect of the Law of the River. One example is water marketing. I think water marketing is the wave of the future. I've been saying that for 20 some years. Interstate water marketing on the Colorado River. It's going to happen. States being able to make agreements to forebear use, temporarily allow use, or permanently alienate the use of water to which they're entitled under the Law of the River. There are those who say it can't be done. I see their legal arguments. I think there are only one or two that have any real wings that would cause a court to hold up water marketing, but I'll tell you this, if all the states agreed we're not going to challenge this, those deals would happen. We already have some modest interstate water marketing now. Things that were unthinkable back when I was in the Department of Natural Resources when I wrote some of those first articles that said someday we would come to this. It was shocking to people that somebody would say those things. We had a few proposals including one that I had to deal with when I was in state government called the Galloway

Group proposal to market some western slope water down river to another state. We did oppose that. We opposed it because it was very bad policy and didn't protect Colorado's interests. If you want your interests protected, you have to come to the table. So we later had a chance, I think it was in 92 during the California drought, Colorado had a chance to bargain with California who threw out at that point a plan to purchase Upper Basin water. We slammed the door in their face and said we won't sell at any price. You take it free. We can't sell it to you because we're forced to let it go down the river for free. Seemed to me the door was open then. We should have bargained. There will be opportunities in the future, but I think we are flirting with more difficulty and certainly semi-disastrous consequences for some interests on the River by not getting in and rolling up our sleeves and figuring out some alternatives for dealing with Colorado River water that may strain at the edges of the Law of the River but, if we all agree, it's okay, we don't have to change anything.

PS: You were talking about the Secretary of Interior appointing some commission. Would it overrule what the states have negotiated among themselves? How would that work?

DG: It wouldn't necessarily overrule. It would supplant that process. It would be a substitute for that process.

PS: Is that something that is seriously being considered?

DG: It's not being considered at all. I think it might have been considered, actually testified, before Bill Bradley's committee when the Democrats were in the majority last time. I think that there was some interest in talking about that then. There's been none since. Absolutely none.

PS: I understand you were actually a consultant under Babbitt.

DG: I was in 1996. That was the end of the first Clinton term, and he wanted somebody to come in and look at the department, top to bottom, and give him some advice on what they should be doing, should they get a second term, which they did. Frankly, the first term wasn't very successful as far as natural resources and environment. The second term was quite successful. I'm not claiming that I made the difference or anything.

PS: Were you there for the second term?

DG: No, I was just there for a couple months.

PS: I don't think Babbitt talks so much about what they did with water, it was more of land protection.

DG: No, there wasn't much done with water. I think one of the disappointments of that administration was that there was a near halt to Indian water settlements. They just never really got going. I did give them some suggestions along those lines, but I think the problem was fundamentally, the White House and Congress balked at spending the money.

PS: Talking about Indian water settlements, it seems like the Indian tribes are getting huge settlements and yet people are asking what they are going to do with this water, they don't need it. Legally, maybe they are entitled to it. A few of them are starting some farming operations. What are the Indians going to do with the water they are winning?

DG: They have some choices. There's on-reservation development of course, and, depending on where the tribe is located, they may use it for mineral development, or they may use it for tourism right along the Colorado

River. That's a viable suggestion. Golf courses, casinos, and the like. Wind River Indian Reservation has significant water rights as a result of the Big Horn litigation. They are using some of it for farming. They've put a lot of it back in the stream for instream flows. Something of a model for what western states might do as their economies shift from a productive agricultural enterprise to tourism. I don't think that they'll ever give up agriculture altogether, but what you do is look around, find the marginal agriculture and cut it back, restore the fisheries and bring in tourists, who pay better than alfalfa hay.

PS: Many people think in Arizona the Indians are going to sell the water to the cities.

DG: That's certainly a possibility, and they've built that in to some of the Arizona water settlements. The idea of marketing does provide an economic development possibility for the tribes.

PS: I know in one case that's already happening. The Ak-Chin Tribe.

DG: They do this through exchanging water too. Gila River has vast tribally owned farms in addition and they're enjoying some economies of scale much as corporate farmers do in the Midwest.

PS: Do you think the appropriation doctrine, first in time, first in right, is going to survive? Some people are saying it needs to be looked at again.

DG: It has survived through changing times. It will survive but its importance will diminish in the same way as if you put a building on top of a foundation. The building has multiple floors, rooms and facades and it's far more complex than the foundation. That is the foundation of our water law, but it enables us to move water from use to use if we change from a

mining state to an agricultural state, an urbanized state, a tourism state or some mix of those things. The doctrine is only a small part of the decision making to get us there. We can market water, trade it to the highest value. We can pass laws that insist that certain minimum flows remain in the stream, or are we going to let private people take a role in that. We have a water trust in Colorado. I'm on the board of it now. We buy instream flows, donate them back to the state to administer. This helps revitalize our fisheries and does wonders for the communities that depend on esthetics and natural environment for their livelihoods. The prior appropriation doctrine is there to stay in my view but it's what we surround it with and how we use it that will really matter in meeting our future needs.

PS: Looking at that and building on it, what were the major projects or legal developments affecting water that brought Colorado to where it is today?

DG: This is the birthplace of the prior appropriation doctrine as we know it. Of course, there was an earlier case or two in California, but this is the place it truly ripened and was given loft. That was a major legal development that influenced the whole west. Since then, we've seen a number of legal developments that have had historical significance. The requirement that water development on the west slope have some compensatory benefits when the water is taken to the Front Range for the west slope. Although very primitive and fragmented, it was an idea that still hasn't come to fruition, had one of its first manifestations here. The very idea of trans space diversions. You take water out of one major watershed, not just one little stream, near by another irrigated field slightly over the watershed, but taking water from one side of the Rocky Mountains to the other, that's something that Colorado realized earlier and ultimately in a more full and grandiose way than almost any place in the country. So those are things that have caused us to wonder if this is consistent with

our principles of water law? Yes, it is. How do we mitigate the impacts of this, how far do we want to go with mitigating, and that led us to have one of the first instream flow laws in the country. In the area of groundwater, Colorado led the way in terms of having, it doesn't sound like very much, recognition that most groundwater is connected with surface water. If you put a well here that's near the river, it's going to affect the flow of the river. To this day, some states don't recognize that fact. Colorado was an early proponent and an early state to recognize the interconnectedness of surface water and groundwater. So it's somewhat of a leader. On the other hand, I think decision making about water is very slow in Colorado, and we haven't been a leader there. We tried an experiment that we're still proceeding with, that is adjudication of most major decisions in water, as opposed to leaving them to an administrative agency. My own view is that administrative agencies staffed by experts, engineers and the like is a more efficient way to deal with it, and the studies we've done show that is more economically beneficial to leave it to the experts rather than fight over it and litigate every issue.

PS: We interviewed Scott Balcomb and one of the legal developments that he thought was significant was the Supreme Court decision that the United States had to recognize the Colorado court for the cases with the Forest Service primarily. Are you familiar with that case?

DG: I think he's talking about the Colorado River Water Conservation District case that said that Colorado courts have jurisdiction over federal reserve rights cases. Colorado was out there on that issue too. Federal reserve rights are the rights for federal lands and Indian tribes and the question was, where are these adjudicated? There's some common sense inclination of people to answer that must be in the federal court. The position that Colorado won and is carried through in other states is that when there is an adjudication of the whole river basin in a state court, the

state court has jurisdiction over the federal water rights too. I'm sure that was the case Scott was talking about. And it certainly is a monumental case. What federal advocates, the people in the Department of Justice, had to say about this and what Indian advocates, and I was one at the time, I filed a brief in this case on the other side, what we were afraid of, federal and Indian interests, not always on the same side, but they were in this issue, was that the state courts would be biased. I think in some cases they may be. We've also seen a number of cases where state courts have been quite generous in adjudicating Indian water rights and federal water rights. One example is the Wyoming Big Horn litigation, 500,000 acre-feet for the Wind River tribes. That's no small potatoes given the size of the watershed and the rivers. There are other examples also to support that. So we were wrong that the state courts would necessarily be biased. However, we may have been right that they would have the expertise and it would be more expeditiously done; it would be less costly to the government and certainly to the Indian tribes.

PS: Looking back over the many things you've been involved in, what are you proudest of that you've accomplished?

DG: I've been able to stick to my guns. I've been able to look back and say that position was right. It was all right to have taken the heat for standing up for conservation or planning or saying it doesn't make sense to have as a policy objective of itself developing our compact apportionment of the Colorado River. So in these water matters, having given a lot of thought to things and following what I thought was the right way to go was justice for Indians or trying to make a more conservative use of natural resources, I feel pretty good about having taken those positions and not wimped out on them.

PS: Is there anything you would have done differently?

DG: Probably being less impatient, not being more patient, being less impatient. Suffering more discourse instead of just throwing up my hands when I have to go through the argument for the fifteenth time, and I don't understand why people aren't getting it. I think I've learned a lot as I've gotten older about chilling out and bearing with people and knowing that they're not just being dense, that they're coming from a different place and they have people they're responsible to that need to hear it.

PS: What has been the greatest surprise for you regarding Colorado River water?

DG: Regarding Colorado River water, I've been wrong about my predictions on the future on a lot of things totally unrelated to this and my view of where society would be. When I was in law school, I thought we'd have a four-day workweek within 15-20 years, and people are working harder than ever. And I was similarly wrong in my predictions on the Colorado River. I thought that we would have many more issues resolved, that the states would be in a more collaborative position, that there would be not just surplus criteria but shortage criteria worked out in the Law of the River, that we might have a new institution for decision making, that we wouldn't be fighting the same battles. I think that's surprising that things have not changed.

PS: What do you see as the most critical issue related to Colorado's water resources today?

DG: For Colorado water resources, I think the most important issue is growth and sprawl. That's what it's all about. The largest single demand on water that affects every corner of the far west and the mountain west is water demand in the Lower Basin and most particularly in southern

California. You couple that with the demands for growth throughout the mountain west itself and Colorado, and we have an irresistible force meeting an immovable object. The immovable object is the finite nature of water resources, and the fact that it's not just finite, but perhaps diminishing, because of climate change. We're doing very little to deal with that demand. In order to address that demand, you have to get into land use. The way we use land dictates how much water we need. Much more than the number of people. If we grow like southern California, based on the assumption that every self-respecting family has their own lot planted in Kentucky bluegrass and exotic plants, we're not going to fare very well in Colorado. We need to think differently. I think that is the challenge, the intersection of growth and the water demands that it can create, the lack of land use planning, climate change, and these other environmental demands. Endangered Species is always brought up. I think it's certainly an issue. The sheer impact of growth in the absence of any kind of land use planning is what will bring us front and center to water problems that we haven't figured out solutions to.

PS: Related to that, how do you see water issues that are facing the whole southwest region impacting Colorado?

DG: I think that goes to what I said about southern California. I think that's an influence that makes all the water debate in Colorado more pointed. Those water demands are protected to some extent by the Law of the Colorado River. In addition, they're exceeding, in the Lower Basin, the legal entitlements. Put that together with the fact that we have an underutilized supply of water here, or at least an underutilized Compact apportionment, there is at least a logical argument that there ought to be some rearrangement of the legal entitlements. That's not something I have ever argued for. I think there's a way that California in particular and the other Lower Basin states can adjust what they do without putting these

excessive demands on the river. But all that aside, the water that we call our Compact apportionment, doesn't exist. Much of it just isn't there. You have a complaint? Talk to the big guy upstairs. They're not making enough water to fulfill all those Compact apportionments. And we are not at the front of the line, but at the end of the line, being in the Upper Basin, because as odd as that is, the old saying is I'd rather be upstream with a shovel than downstream with a water right. In this case, the water does flow down there to the people with the rights. The Law of the Colorado River puts us in the position of hoping for leftovers. There's nothing left over. If you look at the historical flow of the Colorado River going back 350 years, and if you realize the amount of water that we've developed in Colorado is far below our Compact apportionment, maybe all that we can safely develop on a sustained yield basis, it's sobering. It's not something we should be saying here in Colorado. It's almost heretical to admit that fact. We've got to come to grips with that.

PS: I know Arizona is using some of their excess allotment to replenish the groundwater. Has Colorado considered doing anything similar to that?

DG: It would be difficult to use our Colorado River water to recharge groundwater, but we could recharge aquifers in the Denver area with water that's naturally occurring here, and I think we will begin doing that. We also have some trans-space and diversion water that we could use for that, and I suppose indirectly we are using Colorado River Basin water, the extent we're supplanting the use of the Platte water that goes underground. It is an area that we need to explore.

PS: How do you see this Round Table process that Colorado is going through right now? Are you involved in that at all?

DG: I don't know about the results of it. I haven't followed it intimately but when I was speaking positively about where Colorado is in terms of water planning, that's the process I was referring to. I'm glad to see it's happening. There needs to be a next step, and that is making hard decisions and saying the resource is finite and therefore, we're prioritizing or triaging how we'll deal with limited water resources, based on this process. That's the rub. But that's the next step. At least they've taken the first step.

PS: You're not actively involved in those Round Tables?

DG: No, I'm not involved in it at all.

PS: Are you involved right now with water issues other than the legal teaching?

DG: No, I'm not. My dean work here has me fully occupied and I miss that. I'm on the Board of Colorado Water Trust so in a small way, happily staying engaged there.

PS: Is there anything else you'd like to talk about that I didn't ask you about?

DG: No, I don't think so. I've talked your ear off.