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# RECLAMATION AND THE POLITICS OF CHANGE: Rights Settlement Act of 1990

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A decades-long series of water allocation and use disputes between the states of California and Nevada was resolved in 1990. The process involved the negotiation of numerous compromises at both the state and national levels. The result was the passage of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Public Law #101-618) by congress.

This act has been hailed by some as a positive example of what can be achieved when competing interests are successfully brought together to participate in the resolution of conflicts. Some observers have suggested that this act foreshadows future trends that will move western water policy beyond the control of a few vested interests. Consequently, American water policy in general, and western water policy in particular, may become more inclusive of and respond to a broad range of interests.<sup>1</sup>

Others are not nearly so optimistic, in large part because the "new trend" includes the negotiation of water disputes involving Native American claims and environmental issues, often to the detriment of both.<sup>2</sup> Efforts to negotiate twenty-two additional large-scale water conflicts throughout the United States have continued after the 1990 act. Many of these involve both Native American and environmental issues, with challenges to traditional ways of making water policy decisions in the West, and ways that tend to benefit a particular set of interests to the exclusion of others. These interests have become so entrenched as to be routinely discussed in terms of the "iron triangles" of which they are a part.

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The importance of "iron triangles" in natural resource policy in the United States has long been recognized. Also known as subgovernments,<sup>3</sup> subsystems,<sup>4</sup> and whirlpools,<sup>5</sup> iron triangles are "clusters of individuals [who] effectively make most of the routine decisions in a given substantive area of policy."<sup>6</sup> As early as 1960, Philip Foss, in his book *Politics and Grass*, demonstrated the way in which one such "subsystem" dominated U.S. grazing policy on public lands.<sup>7</sup> Numerous studies have identified the phenomenon in other policy areas.<sup>8</sup> A typical iron triangle is composed of members of relevant congressional committees having principal jurisdiction over the policy area; bureaucrats with jurisdiction "paralleling" that of the congressional committees; and private groups or organizations having the greatest stake in the outcome.<sup>9</sup>

One of the most widely-recognized types of iron triangle exists in the area of water policy.<sup>10</sup> Indeed, "[w]ater policymaking at the federal level has long been portrayed as dominated by 'iron triangles' operating through a series of pork barrel exchanges. This triad basis for water politics . . . is widely assumed to be a fixture of resource policymaking" in this area.<sup>11</sup> Although the names of the subsystem members vary from triangle to triangle, they tend to have one thing in common: the promotion of water development projects. The result has been a long-standing emphasis on structural solutions to the nation's water problems,<sup>12</sup> and the construction of over a thousand federal dams alone between 1930 and 1980.<sup>13</sup>

Traditionally, members of these iron triangles have included bureaucrats from one of the federal agencies that build and maintain water projects (the Tennessee Valley Authority, the U.S. Army Corps of Engineers, the Bureau of Reclamation or the Soil and Water Conservation Service); members of development-oriented committees and subcommittees in congress (especially the Public Works and Appropriations committees); and water-user constituency groups.<sup>14</sup> In the West, where irrigated agriculture is in place in most states, the private leg of the iron triangle has been dominated by agricultural interests. This has meant the provision of cheap water for irrigated agricultural interests and political support for the relevant congressmen and the construction agencies involved, most typically, the Bureau of Reclamation or the Corps of Engineers. It has also meant the distribution of benefits to a host of private development interests.<sup>15</sup>

The failure of vigorous attempts by the Jimmy Carter administration to adjust the construction-oriented direction of traditional water policy confirms the strength of the tripartite alliance that has been in place, in many instances, for decades.<sup>16</sup> Recently several continuing and new phenomena have combined to convince even the most cautious of observers that something different is emerging in the water policy arena.<sup>17</sup> The nature of that difference, however, is subject to debate.

If Carter's systematic assault on the national government's water program achieved little else, it did manage to focus national attention on the issue. And the Ronald Reagan administration's indifference to water development projects

managed to achieve some of what Carter's hostility did not. While Reagan was willing to complete major long-standing projects, he was extremely reluctant to approve new starts. During his tenure in office, even some long-authorized projects were not funded, in spite of the sunken costs involved or the outcry from western states in which those projects were to be located. Indeed, in 1987, Secretary of Interior Donald Hodel invited the Auburn Dam lobby to "buy the blueprints from the Bureau of Reclamation and build it yourself." Secretary Hodel was also the first interior secretary to advocate the demolition of a major dam (San Francisco's O'Shaughnessy in famed Hetch-Hetchy Canyon).<sup>18</sup> The George Bush administration was less successful in resisting pressure from congressional components of the water triangle, in part because legislators found a way to "veto-proof" their water bills; they simply attached them to bills authorizing or funding other projects favored by the president, such as the funding bill for the super collider, a multi-million dollar science project to be constructed in Bush's home state of Texas.<sup>19</sup>

Although critics of the "Dam Era" may be partially mollified by some of these events, it is not clear that structural solutions to the country's water problems are a thing of the past.<sup>20</sup> What is clear, however, is that the tendency to authorize megaprojects has been and continues to be challenged on a number of fronts.<sup>21</sup> It has become much more difficult in recent years to obtain authorization and appropriations for large water projects that would have been approved as a matter of course some years ago. And it looks as if some huge dams, construction of which was inevitable just a few years ago, may never be built.<sup>22</sup> If more change is afoot—and most agree it is—what are the sources of that change?

Population growth heads the list of sources. The West is the fastest growing region in the United States today; the vast majority of that growth is occurring in urban areas.<sup>23</sup> In addition, many western states have endured four, five, and even six years of drought. Some areas in California have rationed water for domestic and industrial use for over two years; parts of Nevada routinely mandate restrictions on lawn watering during the summer and early fall. Nonetheless, withdrawals for domestic and industrial uses in many western states are insignificant compared to the share which agricultural interests receive. Some observers argue that a relatively modest reduction in agricultural use, in many cases, could free up enough water to handle population growth for decades to come.<sup>24</sup> Such situations focus the public eye on national and state water policies.

Although irrigated agriculture consumes the lion's share of water supplies in the American West, most of it is used to grow relatively low-value crops. Bureau of Reclamation water deliveries in 1987 totaled nearly 30 million acre-feet, approximately 26 million of which are used to irrigate 11 million acres of land (9 million more acres are currently under construction). This is in contrast to the 3 million acre-feet allocated for municipal and industrial use, and the 1.1 million applied to other nonagricultural uses.<sup>25</sup> Yet "the gross value of all livestock and

crops on lands irrigated by bureau water in 1987 was [only] \$8 billion, which amounted to 5.8 percent of farm value for the nation at large."<sup>26</sup> Further, "irrigation, which is used on only 12 percent of the cropland in the United States, accounts for some 80 percent of U.S. urban, industrial and agricultural water consumption."<sup>27</sup> Of course, agriculture in a state like California is important because it grows many specialty crops (avocados, artichokes, winter vegetables). It also brings in considerable export income. But if one eliminated acreage currently used to grow low-value crops in California that can be grown elsewhere with rainfall (alfalfa, cotton and rice), one could free up enough water for 70 million new residents. At the same time, the state's total agricultural income would be reduced by only 15 percent. California's overall economy would be reduced by only one-quarter of one percent.<sup>28</sup>

What is true in California is even more true in other western states. For example, at least 25 percent of all of Colorado's available water is used to grow alfalfa, with an estimated value of \$170 million in 1987. Irrigated agriculture in Nevada consumes over 80 percent of the state's water supplies, to raise crops that are worth only a sliver of the state's economy (\$46 million in 1986).<sup>29</sup> And finally, U.S. Bureau of Reclamation water is among the most inexpensive (at least for irrigated agriculture), highly subsidized, and inefficiently used water in the American West.<sup>30</sup> Disparities in urban and agricultural water use and pricing make it seem inevitable that a shifting of water resources away from agriculture to industrial and urban uses will occur, albeit gradually and with minimal initial impact on agriculture.<sup>31</sup> Nonetheless, changes in policy will necessarily create bitter conflicts as agricultural interests are pitted against municipal needs.<sup>32</sup>

Two other sets of interests have emerged (and in some cases, coalesced) to challenge traditional water triangles' control of water resource policy in the West. One of the most significant of these has been Native Americans. Armed with the Winters Doctrine, and represented by high-powered legal experts and lobbyists of their own, they have been changing the legal landscape in which water policies are made.<sup>33</sup>

In essence, the Winters Doctrine and subsequent case law asserts that Indian tribes hold "reserved rights" to sufficient quantities of water to fulfill the purposes for which the reservation was originally created; furthermore, those reserved water rights are entitled to the priority date on which the reservation was created.<sup>34</sup> This right is exempt from state law and is not limited by existing appropriative rights. The courts have repeatedly reaffirmed the doctrine. Although the significance of this case was not realized for over fifty years, by 1973 the National Water Commission concluded that "the most intractable problem the commission faced [was] the conflict between existing non-Indian users and newly initiated Indian withdrawals. While the Indians . . . have legal superiority to make use of the water, a later initiated Indian use . . . disrupt[s] pre-existing non-Indian uses representing large Federal, state, and private investments."<sup>35</sup> And although there is still a "considerable amount of uncertainty generated by the existence of Indian rights," until these rights are resolved, "state officials will

be unable to determine whether water is available for appropriation, and the sale and transfer of existing rights will be impeded.<sup>36</sup>

The second set of interests involves the environment. Indeed, "[t]hroughout the West, water reallocation is now beginning to reflect environmental benefits along side traditional uses for water."<sup>37</sup> This is in part because of increased public awareness of the values associated with recreation, fish and wildlife—and awareness of the impact of water development projects on these values. In the West, this has translated also into a focus on the major consumer of project waters, irrigated agriculture, as a significant environmental offender in its own right. Agriculture continues, for example, to remain a principal source of "non-point" pollution; the long-term consequences of pesticides, nutrients, and trace elements in drainage and return flows are only beginning to be recognized.<sup>38</sup> Armed with environmental statutes and legal precedents, interest groups reflecting environmental values have increased their clout in recent years. Consequently, they are much more effective.<sup>39</sup>

As the Reagan administration came into office in the early 1980s, the search for a long-term solution to the nation's water conflicts intensified. Numerous proposals were made, most of which embraced one of two approaches. The first advocated an "all-inclusive" approach, in which a blanket water rights settlement would be applied to all parties in dispute, Indians and non-Indians alike; typically, this approach limited federal reserved rights and increased state control over water resources. This approach was supported by the Western Regional Council and the Western Conference of the Council of State Governments, and was reflected in the bills drafted by each group. Neither bill became law.<sup>40</sup> The second approach, advocated by the National Congress of American Indians, included an emphasis on the resolution of water rights conflicts on a tribe-by-tribe basis. The second approach was adopted and vigorously pursued by the Reagan administration. The Bush administration followed suit. In recent years, however, what started out as a move toward the negotiation of Indian/non-Indian resource conflicts has been expanded to include various other non-traditional interests. "New battle lines are being drawn" as "environmental interests and Native Americans [continue] to play a key role in an allocation process from which they had [previously] been excluded."<sup>41</sup>

In short, the new trend represents an ongoing challenge to the power of traditional water policy triangles. Whether the triangles will prove to be as resilient as they have in the past, as some observers predict,<sup>42</sup> or whether the collection of water interests known as "iron triangles" may be in the process of disintegrating, as others have suggested,<sup>43</sup> remains to be seen. In the meantime, the continuing focus on negotiated settlements has generated a great deal of interest among participants and observers alike.

#### EARLY CONFLICT

The history of conflict over water resources within and between the states of Nevada and California is long and complicated. For over a century, different

water interests within each state have tried, unsuccessfully, to reconcile their conflicting water demands. Lake Tahoe lies in the Sierra Nevada, straddling the California-Nevada border; two-thirds of the lake lies in California, while the remainder is located in Nevada. The Truckee River rises on the California side of the lake and its natural course flows eastward through Reno to terminate at Pyramid Lake. The Carson River also rises in the Sierra and flows into the Stillwater Wildlife Management Area and the Carson Sink. The Walker River, a third river system shared by the two states, originates in California south of Lake Tahoe, and one branch terminates in Nevada at Walker Lake.<sup>44</sup> Given these circumstances, it is no surprise that competition emerged between the two states.

The authorization and construction of the Newlands Project in western Nevada in 1903 did little to solve the water problems of competing users in the area. Indeed, it exacerbated them by bringing into existence additional players and competing uses for that area's scarce water supplies.<sup>45</sup> The Newlands Project was one of the first major reclamation projects undertaken by the Reclamation Service (later the Bureau of Reclamation) under the authority of the Reclamation Act of 1902. It was designed to irrigate the lands around Fallon, Nevada. The Newlands Act made reclamation of arid regions through irrigation a national responsibility. It also set the pace and direction of future reclamation activity in the West.<sup>46</sup>

Upon completion of the project, additional controversies surfaced immediately, both among competing users within the state of Nevada, and between Nevada and California. During the early years, the allocation and use of water supplies were dictated primarily by local interests: Tahoe property owners, power company officials, representatives of various irrigation districts, and individual farmers. Steps were eventually undertaken by the two states, however, to conclude the disputes more formally. And as the tendency to use litigation as a means to allocate water rights increased, state and federal courts became involved. As a consequence, there resulted a number of agreements, decrees and doctrines governing allocation and use of the waters of Lake Tahoe and the Truckee and Carson river systems.<sup>47</sup>

In 1908, for example, the Truckee River General Electric Company entered into an agreement with the Floriston Pulp and Paper Company (both of which utilized Truckee River waters in their operations) to establish what has come to be known as "floriston rates" on the Truckee River. These rates require that water be released from Lake Tahoe (if possible) when natural flows in the river drop below a certain point. The agreement was made to assure adequate flows for the generation of electricity by the electric company, which then owned the dam at the outlet of Lake Tahoe. When the Reclamation Service obtained possession of Lake Tahoe dam from the electric company in 1915, the revised consent decree required the government to adhere to the floriston rates.<sup>48</sup>

Responding to pressures caused by a severe drought, the governors of Cali-



California and Nevada established the California-Nevada Interstate Water Conference Committee in 1931, and assigned it the task of reaching an agreement governing the allocation and use of Truckee River waters. The results of their efforts were incorporated into the Truckee River Agreement, signed in 1935. This agreement, negotiated among the major water rights holders themselves, specified operating criteria for the Truckee River, established maximum storage levels for Lake Tahoe, and laid the groundwork for the construction of Boca Reservoir to create additional storage on the Truckee system. It included the floriston rates requirement, which could be met by releases from Lake Tahoe or Boca Reservoir, once the latter was completed.<sup>49</sup>

In 1913, the United States government had initiated a suit to establish firm water rights for both the Newlands Project and for irrigation on the Pyramid Lake Reservation. Although the trial took place between 1919 and 1921, the final decree was not issued until 1944 (*United States v. Orr Water Ditch Company*, Equity No. A-3 [D. Nev. 1944]). The *Orr Ditch* decree, as it later became known, gave legal sanction to the major elements of the Truckee River Agreement, including the section dealing with floriston rates. It also awarded the national government water rights for the irrigation of approximately 5,800 acres on the Pyramid Lake Reservation. These rights were awarded an 1859 priority date (the year in which the reservation was created). The national government made no



An early photograph of Pyramid Lake. (Maxwell Adams Collection, Nevada Historical Society)

effort to obtain water rights on behalf of the Pyramid Lake Tribe for purposes *other than irrigation*. This specific focus and commitment became important during later efforts to negotiate an interstate compact between the states of Nevada and California. For the Newlands Project, the United States received a 1902 priority right to divert Truckee waters at Derby Dam at the rate of 1,500 cubic feet per second. The water was to be used for the irrigation of 232,800 project acres; for storage at Lahontan Reservoir; or for the generation of power and other municipal and domestic purposes.<sup>50</sup>

During the 1930s and 1940s, reclamation projects in the West were pursued as part of President Franklin D. Roosevelt's public works program to take the United States out of the Great Depression. During the 1950s, reclamation became part of the "pork" of pork-barrel politics.<sup>51</sup> Nevada received its share; consequently, additional storage capacity now serves the system. None of these actions resulted in long-term, comprehensive solutions to broader interstate water problems, which became more numerous and complicated as the years went by.

Competition for eastern slope waters intensified after World War II. Lake Tahoe grew into a major gaming and recreational area. The Reno-Sparks metropolitan area evolved into a bustling commercial and recreation center. Competition for water among the ranching and farming interests on both sides of the border continued. All of these changes resulted in increased demands on the system—and contributed to a growing awareness of the need for the two states to reach a comprehensive agreement regarding the allocation of their shared water resources. The political leadership in both states advocated the development of plans to allocate the water in the Walker River and the preparation of contingencies for drought years. California politicians wanted assurance that some of the flows of all three rivers would be available to support future state growth. Nevada's leaders were fearful that California would one day lay claim to the waters that, although originating in California, flowed naturally into Nevada. Both sides realized that an interstate water compact was the only way to get a comprehensive water agreement through Congress.<sup>52</sup>

Against this backdrop, the two states decided in 1955 to use the authority of the commerce clause of the United States Constitution to negotiate an interstate compact, which would allocate once and for all the waters which they held in common. On August 4, 1955, President Dwight D. Eisenhower signed congressional legislation authorizing representatives of the two states to begin negotiations. The ensuing process was a lengthy one, requiring the appointment of compact commissions in each state, with a federal representative to safeguard federal interests and to chair a joint commission; ratification by the respective state legislatures in identical form; signatures of the two governors; ratification by the United States congress; and the signature of the president of the United States.<sup>53</sup>

After fourteen intense, frequently-stalemated years of negotiation, an agree-

ment was finally reached: When all was said and done, 90 percent of the disputed waters had been allocated to Nevada and supplies were reserved for growth in the Lake Tahoe-Truckee area of California. In 1968, the compact was submitted to the respective state legislatures for ratification. Much to the surprise of the participants, it took yet another two years and many concessions to complete the process of state approval.<sup>54</sup> California ratified the compact in 1970; Nevada followed in 1971. Approval by the congress, however, was not forthcoming. The states have been operating according to the terms of the compact (voluntarily) since that time. And numerous efforts have been made to persuade congress to give its stamp of approval. Indeed, between 1972 and 1979, Nevada and California congressional delegations offered six different bills seeking ratification; none even received a hearing. One last major effort to have the compact ratified was made by U.S. Senator Paul Laxalt in 1985; although his proposal did receive a hearing, at least, no other actions were taken.<sup>55</sup>

### A CHANGING CONTEXT

The failure of various parties to obtain ratification of the compact for more than fifteen years was due, in large part, to the fact that the versions of the compact submitted to congress emphasized the protection of the water rights of the vested interests involved in negotiating it, to the exclusion of other interests involved, especially those of the Pyramid Lake Tribe. Neither the possible inclusion of water to maintain Pyramid Lake nor the recognition of nonestablished or unclaimed water rights by the Pyramid Lake Paiutes under the Winters Doctrine of 1908 was seriously considered by the compact commission.<sup>56</sup> The commission recognized only those waters allocated by the *Orr Ditch* decree of 1944, which limited tribal water rights to agricultural use. Under the Winters Doctrine of 1908, however, and subsequent case law, the tribe was entitled to enough water to serve all the purposes for which a reservation of land was made; additionally, those reserved water rights are entitled to the priority date on which the reservation was created (in this case, 1859).<sup>57</sup>

As the various diversionary and storage components of the Newlands Project were completed, the water level of Pyramid Lake eventually dropped, exposing sandbars at the mouth of the Truckee; fewer and fewer fish were able to spawn. The last spawning run was made in 1938 and the original strain of Lahontan cutthroat trout in Pyramid Lake became extinct by 1940. A closely related strain of Lahontan cutthroat trout was subsequently introduced to the lake, and it has been declared "threatened" under the provisions of the Endangered Species Act of 1967. The cui-ui, which are found *only* in Pyramid Lake, have been listed as "endangered." Both are thus entitled to protection by federal law.<sup>58</sup> Indeed, negative environmental impacts to Pyramid Lake from the Newlands Project have triggered lengthy and intense litigation by both the Pyramid Lake Paiute Tribe and the U.S. government against the Newlands Project's operators, Truc-

kee-Carson Irrigation District (TCID), as well as virtually every other user of Truckee River water in both Nevada and California.<sup>59</sup> The tribe has been winning these cases—and is becoming increasingly successful in its efforts to increase flows into Pyramid Lake.<sup>60</sup>

For example, in the early 1970s, the secretary of the interior, responding to the provisions of the Endangered Species Act, decided to use the waters stored in Stampede Reservoir *exclusively* for the benefit of the Pyramid Lake fisheries.<sup>61</sup> That decision was challenged unsuccessfully by the Carson-Truckee Water Conservancy District and Sierra Pacific Power Company.<sup>62</sup>

And in 1973, in response to a suit brought by TCID asserting that the amount of water allocated to it was insufficient, the court found instead that Newlands Project water diverted for use by TCID was inefficiently used (45 percent of the diversions do not make it to the fields). Subsequently, a federal court-ordered administrative process, known as “Operating Criteria and Procedures” (OCAPS), in combination with several court cases, has served to significantly reduce Newlands Project diversions from the Truckee,<sup>63</sup> in order to provide as much water as possible to Pyramid Lake.<sup>64</sup>

In a second important case,<sup>65</sup> the secretary of the interior was *required* to deliver to Pyramid Lake all water not otherwise obligated by court decrees or contracts. The court further ordered the secretary to enforce the original 1973 OCAP, which had reduced TCID’s combined Carson and Truckee river diversions to a maximum of 288,000 acre/feet annually; if the provisions of the OCAPS were violated further, the court asserted, the 1926 Newlands contract with TCID was to be terminated. TCID refused to comply with the court order and continued diverting water far and above the amount to which it was legally entitled. The secretary terminated the contract, as directed, and TCID brought suit. Since 1973, the Bureau of Reclamation has issued an interim OCAP each year, pending the outcome of the case. The secretary’s right to terminate the contract was upheld in 1984.<sup>66</sup>

In 1988, the Bureau proposed a final OCAP with maximum annual diversions to TCID from the Carson-Truckee system to reach no more than 320,000 acre-feet/year by 1991. This proposal was challenged on a number of fronts. The tribe has also been pursuing restitution from TCID and Newlands Project irrigators for past diversions from the Truckee which violated the OCAPS, a pursuit sanctioned by the Ninth Circuit Court.<sup>67</sup> Such alleged wrongful diversions may be in excess of 800,000 acre-feet.<sup>68</sup>

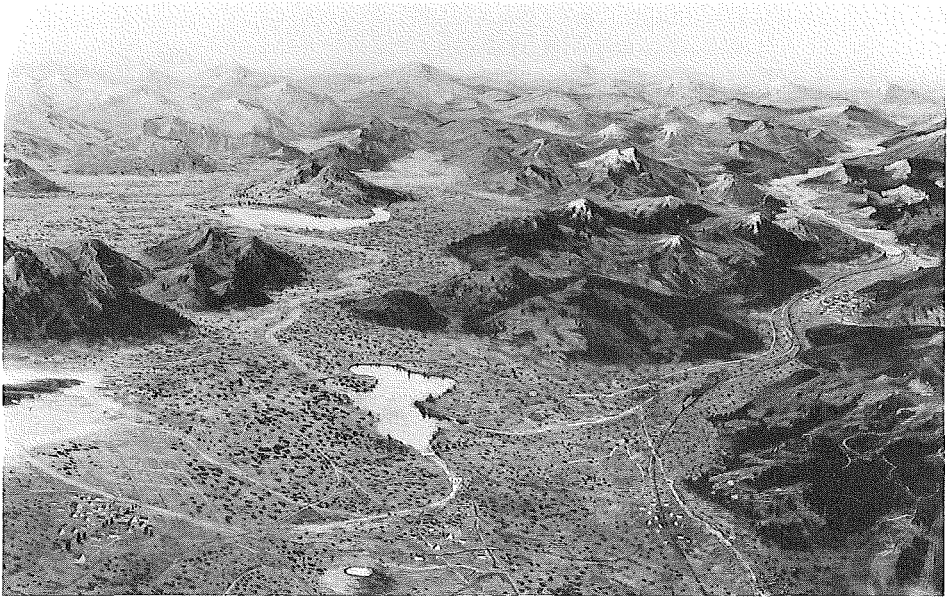
Failure to achieve ratification after the 1970s also can be attributed to other factors. One of these is the environment. The national government felt, for example, that the terms of the proposed compact would conflict with its efforts to secure water to repair the environmental damage caused by the Newlands Project, not only within Pyramid Lake but elsewhere in the Carson-Truckee system.<sup>69</sup> Consequently, under pressure from various environmental groups, one set of environmental problems targeted in the 1990 legislation involved the

Lahontan Valley Wetlands in general, and the Stillwater Wildlife Management Area near Fallon in particular. The Stillwater Wildlife Management Area constitutes the largest primary wetlands within Lahontan Valley. Over 410,000 ducks, 28,000 geese, and 14,000 swans use the area during spring and fall migrations. Ducks breed in this area, producing approximately 25,000 waterfowl each year. Bald eagles also winter there. In 1988, Lahontan Valley was designated as a Western Hemisphere Shorebird Reserve, one of four such sites in the United States. The Truckee-Carson river system supplies water to these extensive wetlands areas, which lie on the eastern edge of the Pacific Flyway for migrating birds. These migratory birds and their habitat are protected under treaty between the United States and Canada.<sup>70</sup>

Since the completion of the Newlands Project at the turn of the century, it is estimated that Nevada wetlands have been depleted by 85 percent (from approximately 113,000 acres to less than 15,000).<sup>71</sup> In addition, the previously clean water supplies in some of the remaining wetlands have been replaced by agricultural runoff from irrigated acreage. As the efficiency of the irrigation system in the area improves through OCAP enforcement and other inducements, agricultural drainage is reduced, with consequent reductions in water flows to the wetlands. As areas of the wetlands dry off, naturally occurring trace elements will become more concentrated, and in some cases, toxic. All forms of wildlife feeding in such areas could be poisoned.<sup>72</sup> Something obviously will need to be done to save what remains of these valuable natural resources—and to increase and enhance the acreage.

The third set of water problems facing the national government in northern Nevada concerns the status of the Fallon Paiute Shoshone Indian Tribe. In 1890, under the provisions of the General Allotment Act of 1887, fifty 160-acre allotments of land were awarded to the tribe, followed by an additional allotment of 146 160-acre parcels of land in 1894, for a total of more than 31,000 acres. Most of this acreage was initially located in what later became the Newlands Project Area.

Following the authorization and implementation of the Newlands Act of 1902, the national government entered into contracts with the tribe, whereby 186 individual tribal members gave up their 160-acre tracts of land (for the Newlands Project) in exchange for 10-acre allotments with fully irrigable water rights attached thereto, to be served by the Newlands Project once construction was completed. Thus 30,000 acres were carved out of the Indians' reservation to make way for the Newlands Project. In exchange, these tribal members received 4,640 acres with water rights attached, to be given to the tribe in perpetuity at no cost. Additional acreage was later added to the reservation, bringing the total amount of acreage up to 5,400, again with attached water rights. However, no water was ever given to the tribe after the construction of the project. In 1978, by passing Public Law 95-337, congress recognized the failure of the government to meet its contractual responsibilities to the Indians. It also recognized tribal



An artist's conception of a bird's eye view of the completed Newlands Project. (*Nevada Historical Society*)

growth, and therefore increased the size of their reservation by 2,700 acres. The mandate of the 1978 act, however, was not carried out.<sup>73</sup>

By the late 1980s, then, the national government found itself the target of pressure to make restitution to the Indian tribes involved in these disputes, as well as the environmental interests that had been harmed by previous policy. It was under these conditions that the final effort to negotiate an interstate compact between the states of Nevada and California occurred.

#### THE NEGOTIATION BEGINS

Harry Reid was elected to represent Nevada in the U.S. Senate in 1986, and assumed office in 1987. His predecessor, Paul Laxalt, had failed to obtain ratification of his version of an interstate compact during his last year in office because his agreement did not adequately address federal obligations resulting from treaties and other agreements. Immediately after assuming office, Reid announced his intention to resolve the myriad issues relating to a long-term solution to northern Nevada's water problems. He chose to utilize negotiation as the means to this achievement, as promoted by the Reagan administration.

Toward the end of 1987, Senator Reid and his staff began to develop a comprehensive understanding of the various parties and issues involved in Nevada water politics. That process took nearly six months. At that time, Reid brought the major Nevada players together for the first rounds of negotiations: Sierra

Pacific Power Company (interested in the capacity to store additional water supplies both to provide drought protection and support future growth); the Pyramid Lake Paiute Tribe (interested in economic development, compensation, and the enhancement and preservation of Pyramid Lake and its fisheries); the state of Nevada (interested in seeing to it that northern Nevada's rights to water were protected from encroachment by California); and the Truckee-Carson Irrigation District (interested in continuing to utilize Newlands Project water supplies for irrigated agriculture).<sup>74</sup>

Although other parties would certainly be affected by the outcome, Reid felt strongly that the scope of the conflict should not be enlarged until the need arose. The Fallon Paiute Shoshone Tribe's legal position was so strong that, combined with the commitment of the national government to see to it that their situation was remedied, Reid felt it was not necessary to bring them into early negotiations. The remedy that would be forthcoming had already been agreed upon (a settlement fund of \$43 million)—and would be reflected in the 1990 legislation.<sup>75</sup> The environmental groups advocating protection of the wetlands, most notably the Lahontan Valley Wetlands Coalition, would be brought in later in the process, after some of the more contentious elements of the agreement were worked out.

According to some observers, TCID took an adamant position at the outset. By June of 1988, it had withdrawn from the process.<sup>76</sup> A lawyer representing the Pyramid Lake tribal interests offered the opinion that TCID felt it had little or no incentive to participate. Apparently TCID felt that it would stand a better chance in the courts.<sup>77</sup> Frank Dimick, Western Relations Liaison for the Bureau of Reclamation, mirrored this sentiment: "TCID felt there was nothing to bargain for. There are different perceptions to what happened that day when they walked out. They voluntarily left, but they felt there was nothing to negotiate so they were squeezed out. Why negotiate for less water? No one left them anything to bargain with—no chips on the table."<sup>78</sup> One observer who wishes to remain anonymous noted the difference in atmosphere at these negotiations, compared to previous attempts. In those cases, there seemed to have emerged an "us" against "them" attitude, which pitted the non-Indian interests against Indian claims, and served to push the Indian interests into the background. Such an attitude was not apparent during the 1989 negotiations. In fact, the parties—with the exception of TCID—seemed willing to bargain rather than pursue additional years of court battles.<sup>79</sup> After TCID's departure, the other players remained and managed to reach agreement on the major issues involved, one issue at a time.<sup>80</sup>

An important building block of the initial negotiations was a preliminary agreement between the Pyramid Lake Tribe and Westpac to seek an adjustment of the floriston rates. This allowed water from Stampede to be released in the springtime during the spawning of the cui-ui fish, while allowing Westpac storage in Stampede.<sup>81</sup>

Reid gradually expanded the negotiations in the summer of 1988 to include the state of California, the Stillwater Wildlife Refuge, the Fallon Naval Air Base, the Fallon Paiute Shoshone Indian Tribe, the Cities of Reno and Sparks, as well as the U.S. Bureau of Reclamation and the Bureau of Indian Affairs. The last two organizations needed to sign onto an agreement before congressional ratification would be likely. As more and more progress was made, very large sessions, which included all interested parties, were held. These sessions provided participants the opportunity to report what had been accomplished to date and to obtain input. Two groups which became involved at this point in the process were the Lahontan Valley Wetlands Coalition and the Coalition for a Negotiated Settlement. Throughout this process, the parties came to realize that unless the legal and political problems facing the national government regarding the Indian tribes and the environment were adequately addressed in the settlement, ratification by congress would not be forthcoming.<sup>82</sup> As noted, neglect of these interests had been the major impediment to consideration of the 1985 Laxalt proposal.

An agreement was reached in a remarkably short time (less than two years). The Truckee-Carson-Pyramid Lake Agreement was signed and a draft of its component parts was submitted to congress on August 4, 1989; the proposal was signed into law by President Bush on November 16, 1990. Implementation of its provisions moved ahead.

#### THE SETTLEMENT PROVISIONS

The Truckee-Carson-Pyramid Lake Water Rights Settlement Act (84) contains two titles. The first settles the 70-year-old dispute between the Fallon Paiute Shoshone Tribe and the national government. It creates a settlement fund for the tribe in the amount of \$43 million, to be allocated over a five-year period beginning in 1993. The fund is to be used for tribal economic development. In exchange, the tribe agrees to release all claims that it has had against the national government resulting from its failure to meet its water obligations to them. The tribe also agrees to accept and abide by the limitations imposed on their water rights served by the Newlands Project. These are not to exceed 10,587.5 acre/feet of water per year for the reservation. They agree to withdraw their previous objections to the OCAPS set by the Bureau of Reclamation for the Newlands Project in 1988. And, finally, they agree to cooperate in the development and implementation of a plan to improve the efficiency of irrigation systems on the reservation that will utilize project water.<sup>83</sup>

Title II is much more complicated. The first set of conflicts that it resolves concerns "the equitable apportionment of the waters of the Truckee and Carson Rivers and Lake Tahoe between the states of Nevada and California."<sup>84</sup> Eighty percent of the Carson River and 90 percent of the Truckee River are allocated to the state of Nevada. This accomplishes two goals. It protects the water supply



that Nevada is fully using already. At the same time, it provides some water from the two river systems to support growth in the neighboring "east slope" counties of California. It also removes the fear in both states that the other will eventually seek additional water supplies at the expense of its neighbor. Recognizing growing urban demands, it makes provisions for increased storage capacity for Sierra Pacific Power Company. Such capture and storage can ensure a degree of drought protection and provide additional water supplies to support growth.

Title II also addresses the issue of wetlands protection in northern Nevada. It authorizes the purchase of water rights by the United States government, the state of Nevada, and other interested parties from "willing sellers" in the Newlands Project service area. The target goal is to sustain approximately 25,000 acres of primary wetland habitat within the Lahontan Valley Wetlands. In addition, a fish and wildlife management fund is established, to be jointly managed by the U.S. government and the state of Nevada, on behalf of the wetlands. Provisions are also made for the protection and expansion of the Stillwater National Wildlife Refuge (77,520 acres).

The Pyramid Lake Tribe, in exchange for dropping the claims it presently has against the national government, shall receive \$25 million for enhancement of its fisheries, as well as an additional \$40 million for tribal economic development. Aggressive plans for the recovery and enhancement of the fisheries are also specified.



Stillwater Wildlife Management Area. (*Nevada Historical Society*)

By far the most interesting—not to mention revealing—part of this Act concerns the Newlands Project and TCID. The Act expands the legal purposes for which Newlands Project water may be used; these purposes now include—in addition to agriculture—fish and wildlife, municipal and industrial water supplies, water quality, recreation, and other purposes recognized as beneficial under state law. The expanded purposes are to be met, moreover, in a manner that will not increase diversions of the Truckee River over those presently allowed. The Act puts the TCID on the defensive by authorizing the secretary of the interior to cancel all TCID repayment obligations owed to the Bureau of Reclamation—but only provided TCID agrees to collect all such repayment obligations, *and* to use those monies to develop and implement water conservation measures. Furthermore, the debt cancellation will not occur until or unless TCID has entered into a settlement agreement with the secretary concerning claims for recoupment of the water which has already been diverted by TCID in excess of the amounts permitted by applicable OCAPS.

The Act also specifies that the OCAPS presently in effect shall remain in effect until December 31, 1997, unless the secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act. It further specifies that, prior to December 31, 1997, no court or administrative tribunal shall have the jurisdiction to set aside any such OCAPS or to order or direct that they be changed in any way. Indeed, “all actions taken heretofore by the secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to revision in any judicial or administrative proceeding.”<sup>85</sup> Under these provisions, the TCID will be unable to make good on its implied threat to litigate the conditions of the agreement. This grant of authority is sufficient to allow the secretary to deny water to the TCID to force it to agree to recoupment of the water illegally diverted by TCID during the years TCID refused to adhere to the OCAPS.<sup>86</sup>

#### THE BLACK BOX: WASHINGTON, D.C.

The negotiated water settlement that was reached in northern Nevada was hailed as an outstanding feat by many, especially given the number and scope of the conflicts that arose at the state level. The bill had to be ratified by congress, however, to become law. And the “black box” of D.C. politics proved to be an even more complex negotiation process than that which took place in Nevada, with many congressmen, senators, committees, agencies and the president needing to sign off on the bill to make it law.

To a distant observer reading the Reno papers, the process appeared basic. The water policy bill was introduced by Senator Harry Reid and initially died in a package of other water bills in the Senate Water and Power Subcommittee.<sup>87</sup> The bill was later revived and attached as a “rider” to S. 3084, the Fallon Paiute Shoshone Tribal Settlement Act. This act was passed in the senate during the

last days of the 101st Session of Congress. Subsequently, it was passed by the house of representatives and was signed into law by President Bush.

Prior to that, however, the proposal had a number of other hurdles to jump. A closer look at the process which culminated in Public Law #101-618 demonstrates that several Washington politicians significantly influenced the outcome. These actors, pursuing seemingly unrelated political agendas of their own, had the power to kill the bill outright if those agendas were thwarted.

Several members of congress wanted to use the legislation to take a broader policy stance in a related issue area.<sup>88</sup> For example, Senator Bill Bradley, as Chair of the Senate Water and Power Subcommittee which exercised jurisdiction over the bill, questioned the rationality of continued support of western irrigated agricultural projects, especially in the face of increased competition from more "beneficial" uses (environmental, Native American, industrial, municipal).<sup>89</sup> Several eastern legislators made known their distaste for western water practices. They noted that farmers in Maine are going bankrupt without federal water subsidies, while western farmers living in the desert, are flourishing because of them.<sup>90</sup>

The message emanating from Bradley and other influential D.C. politicians was straightforward. Irrigated agriculture in the West should no longer be subsidized; rather, western water should be subject to the same market mechanisms as other commodities.<sup>91</sup> From their point of view, the economics of irrigated agriculture have never been even marginal. The major reason for developing reclamation projects involved the need to encourage westward development.

Currently, for example, farmers are getting 80 percent of the benefits of federally subsidized irrigation projects, while footing only 20 percent of the bill.<sup>92</sup> Regarding the Newlands Project in particular, in an average water year, the Newlands Project consumes more than four and one-half times as much water as Westpac Utilities' entire service area. Water consumers in the Reno-Sparks area pay roughly eighty times as much for their water as do agricultural consumers in the Newlands Project. Nearly half the water rights used by the Newlands Project are held by 3 percent of the large farmers. The Newlands Project wastes about twice as much water as the Westpac service area uses. And, finally, 82 percent of the water is used to support less than 1 percent of the economy, while 18 percent of the water use supports 95 percent of the economy.<sup>93</sup> Indeed, according to the Coalition for a Negotiated Settlement,

. . . like most of the Bureau of Reclamation irrigation programs, the Newlands Project has resulted in large quantities of federally-supplied and federally-subsidized water locked into relatively low-value uses with little, if any, incentive to conserve. From the standpoint of national, or even regional, economic development, the extensive water subsidies have led to inefficient use of the land and water resources as well as of capital, labor and materials.<sup>94</sup>

A typical consumer of water for agriculture in the Newlands Project area pays

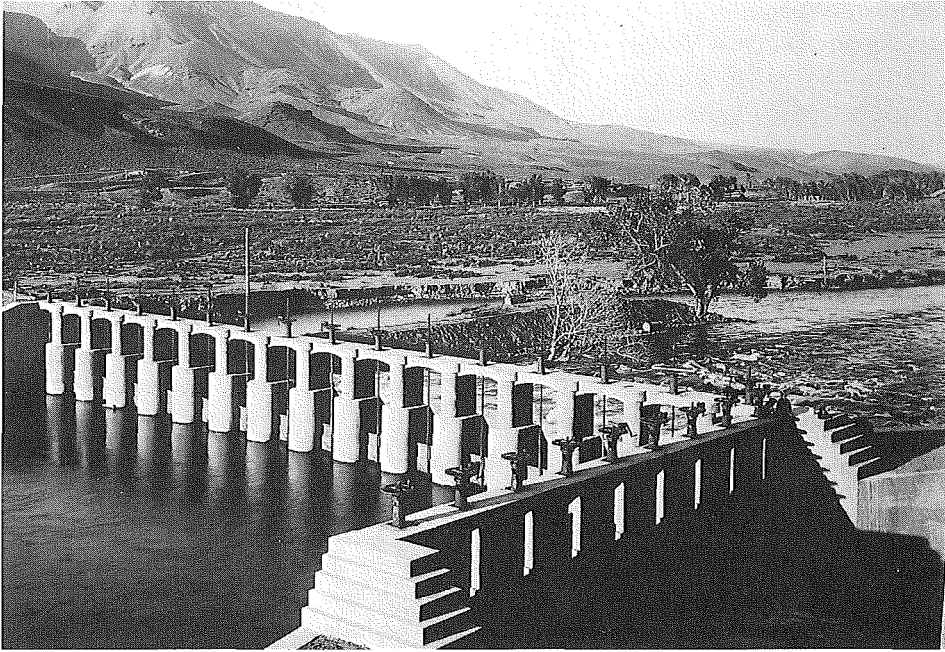
an average of \$5.86 per acre/foot of water, while the average consumer for municipal/residential purposes in Reno and Sparks pays \$450.00.<sup>95</sup> Urbanization and the drought have only intensified the concern and demand for water, both in Nevada and elsewhere in the West.<sup>96</sup> (Nevada is currently in its seventh drought year, despite having had a wet winter in 1992–1993.)

The Division of Water and Science of the Department of Interior has long advocated more efficient use of water resources. It has recommended storing water upstream during the dry summer months, where there is a lower evaporation rate and deeper reservoirs, with less surface area subject to evaporation. The water could be moved downstream in the fall.<sup>97</sup> Water so conserved would be especially valuable for urban usage at that time of the year, not to mention fish and wildlife.

The concerns expressed by various D.C. politicians regarding the inefficiency of western water projects were not the only ones to surface as the bill wound its way through the congressional system. Significant elements of the Washington bureaucracy also became involved, most of which are located in the Department of Interior. Indeed, cooperation from the Department of Interior was critical for passage of the bill. Cooperation *within* the department was difficult to obtain, however.

The Department of Interior contains competing (and sometimes conflicting) interests, with the Bureau of Indian Affairs, the Bureau of Reclamation, the Division of Water and Science, the Bureau of Land Management, and the U.S. Fish and Wildlife Service (among others) all under the same roof. When three assistant interior secretaries testified before Bradley's Water and Power Subcommittee in February of 1990 on this and other pending water settlement legislation, the subcommittee was unhappy with the lack of knowledge and unwillingness to cooperate among them.<sup>98</sup> Secretary Manuel Lujan, in response to complaints, ordered the formulation of an intra-departmental committee to iron out and evaluate the department's position. This was in essence a separate negotiation process within the department that resulted in a unified position. Members of this committee helped draft the amendment language that eventually was signed into law—language that moves away from traditional conceptions of reclamation policy in the United States.<sup>99</sup>

The Office of Management and Budget (OMB) and the Senate Select Committee on Indian Affairs also tried to influence a major component of the settlement. The amount of money to be allocated to the Pyramid Lake Tribe was the key issue here.<sup>100</sup> Although the OMB insisted that the \$65 million targeted for the Tribe was much too high, the select committee thought the offer was fair, and the tribe itself was in agreement. In spite of worries that President Bush would refuse to accept this section of the bill if OMB dug in its heels, Senator Reid decided to go with the committee's recommendation anyway. President Bush apparently agreed. In the closing hours of the 101st Congress, Reid met with committee chairmen in the house, pleading with them not to exercise jurisdic-



Derby Dam, c.1904.

tion, and to let the bill go to the floor on a voice-vote.<sup>101</sup> He was successful in his lobbying. The bill was signed into law in November of 1990.

One pivotal aspect of the process was the united front presented by the Nevada delegation. Senators Bryan and Reid and house members Barbara Vucanovich and Jim Bilbray all favored the amended legislation.<sup>102</sup> Had Vucanovich wanted to, she could have killed the bill in the house. The bill was passed by a voice-vote, however, and no one exercised committee jurisdiction.<sup>103</sup>

Another crucial aspect of the bill's success was the united front in supporting its passage by the local parties involved in the initial negotiations. Those parties with veto power—the states of Nevada and California, the federal government, the Pyramid Lake Tribe, and Sierra Pacific—supported the measure.<sup>104</sup> TCID, which left the table early on and chose to take its stance opposing the measure, did not have the influence to stop the process.<sup>105</sup>

Between the time the bill was submitted and signed into law (nearly a year), several significant, even telling, amendments were made to it. The amendments were significant because they restricted TCID's ability to litigate, and thereby stall implementation of the settlement and protect its water monopoly. The amendments also mandated recoupment of illegally diverted project waters, giving the secretary of the interior leverage to force TCID to improve its irrigation systems. Both these amendments were added to Reid's original proposal by the Committee on Energy and Water which reviewed it. One D.C. insider who

wishes to remain anonymous suggested that Bush was prepared to veto the bill if these provisions were not included.

The amendments were telling because the national government sent a signal to western states regarding the future direction of reclamation politics and policy in the United States: No more business as usual. In response to increasing disenchantment with and criticism of reclamation projects in general, and inefficient, uneconomical, heavily subsidized irrigated agriculture in particular, there is a growing consensus that the national government is plainly moving in a new reclamation water policy direction.<sup>106</sup> Indeed, more than one interviewed observer went so far as to suggest that this is the beginning of the end of subsidized irrigated agriculture in the West.<sup>107</sup>

In the meantime, various state and local interests, TCID aside, managed to obtain at least part of what they wanted from the terms of the settlement.<sup>108</sup> Sierra Pacific wanted drought protection; it got at least forty years of it, provided it develops storage capacity to meet future urban demands. California and Nevada wanted assurance that their water supplies would be protected in the future; they both received such assurances *and* ended the hundred-year-old water war between the two states. The Pyramid Lake Tribe wanted money and water enough to maintain and enhance Pyramid Lake and its fisheries; it got the promise of some of both, and while those amounts may turn out not to be "enough" in the long run, the agreement continues the pattern of decisions favorable to the tribe and the lake. The Fallon Paiute Shoshone Tribe wanted justice. If one defines justice in terms of forthcoming water rights and monetary compensation for past damages, then justice, in this instance, was served. The environment benefitted as well, with provisions built in for wetlands and wildlife.

The national government may have benefitted most of all. Since it will be party to the negotiation of twenty-two (to date) water resource disputes in the United States over the next several years, both the process and the outcome served to move toward several related national goals. One of these involves the environment. The Bush administration came into office with a promise to improve the record of the national government with respect to the environment. The negotiated settlement provided such an opportunity. It also forced the Department of Interior to come to grips, at least in part, with the multiplicity of interests that are housed within it. The result was a unified position on this particular settlement, which may be indicative of future stances.

The national government was also able to move in a new direction regarding reclamation policy in the United States, a direction many feel is long-overdue. Although irrigated agricultural projects in the West probably will never be totally abandoned, it seems obvious that only the most efficient agricultural projects will continue to be even partially subsidized, at least if the policy directions pursued from D.C., and reflected in this piece of legislation, continue to be pursued.

Perhaps even more important, the national government has changed from being a reactive to a proactive participant in the resolution of reserved rights conflicts to which it is a party. The reserved rights issue has been changing the landscape of American water politics for the last decade. That landscape will continue to change, as similar sets of reserved rights conflicts are dealt with in the future. The government was also able to disentangle itself from the many lawsuits that have emerged over the years as a result of the Newlands Project.

This, of course, puts the most positive of interpretations on the outcome—and places what some feel might be an unwarranted amount of faith in the federal government's ability to carry out its responsibilities under the act. Several important questions need to be asked in this regard, and an eye kept open in the future to determine just what the answers may be.

What evidence is there that the national government will be forthcoming with the monies and water rights promised in this settlement to both tribes? If history gives us any indication, there is cause for concern in this regard. Indeed, two of the major conflicts that had to be negotiated here stemmed from broken promises made to the Fallon Paiute Shoshone Tribe and from the failure of the national government to adequately protect the interests of the Pyramid Lake Tribe under the Winters Doctrine.<sup>109</sup>

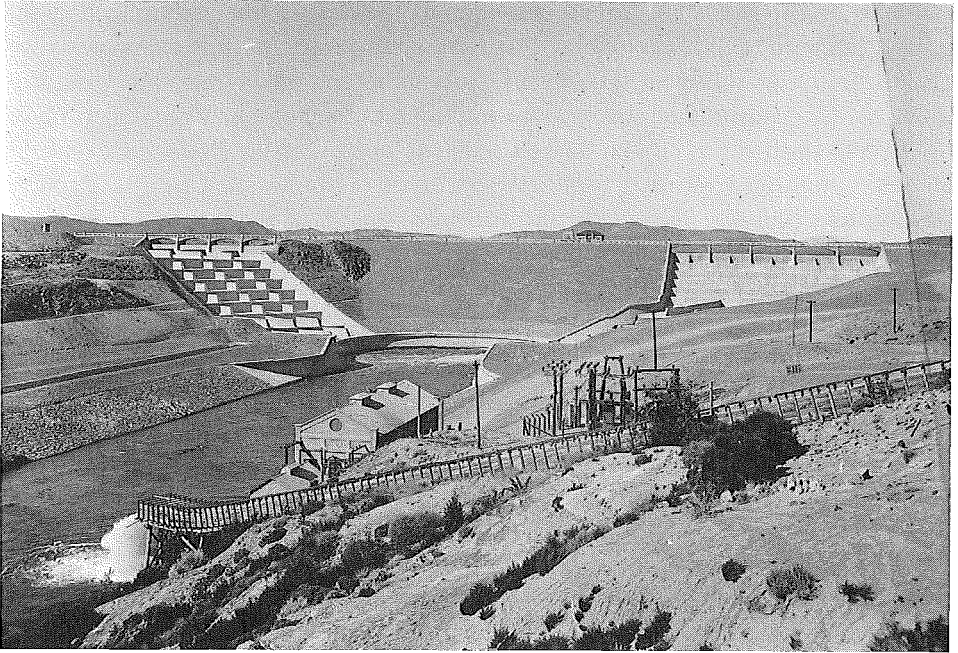
Second, can this be seen as a case of "coercive" negotiation, as some have suggested? Was "coercion" used here to force the Indians (and TCID, at least from their point of view) into or out of "negotiating" claims that might better be handled through litigation? Certainly, the national government is putting fiscal and other pressures on Indian tribes around the country to participate in negotiations of this type.

Third, what about the process of implementing the provisions of the bill? If the process breaks down, what effect will it have on the interests involved in this settlement? And what might such a breakdown portend for future negotiated settlements where Indian and environmental issues are concerned?

#### IMPLICATIONS FOR THE FUTURE

Iron triangles, such as the one that dominated water policy in northern Nevada for decades, are being challenged on a number of fronts throughout the American West. These include demands for change emanating from urban, environmental and Native American interests. What is likely to be the consequence of such demands? As McCool notes, typically the result falls into one of four categories:

First, political forces from outside the iron triangle [may] have a temporary impact on a triangle, which responds in an ad hoc fashion and then returns to policy-making as usual. Second, an iron triangle can coopt potential new enemies by allocating resources to them. Third, new demands sometimes result in new iron triangles with their own system of



Lahontan Dam in an early photo. Notice the wooden flume in the foreground. (*Nevada Historical Society*)

policy-making. Fourth, the rise of new interests, especially when accompanied by larger changes in the sociopolitical environment, may destroy an existing triangle.<sup>110</sup>

The results in future negotiations of this type may fall into any one of these categories, depending on the circumstances involved. The iron triangle of traditional western water interests, held together and frequently represented by such national organizations as the National Water Resources Association and/or the National Rivers and Harbors Congress, appears to be in the process of disintegrating—if it has not already done so, as some observers believe.<sup>111</sup> The iron triangle of the past, which operated for fifty years with more or less *carte blanche*, is becoming more a decentralized “network” of iron triangles. Many of these iron triangles will find themselves operating from an increasingly defensive position, as was the case with the triangle dominated by TCID. This will be especially true for those triangles that become entangled in water settlement negotiations of the type described here. The result will depend on the players, the distribution of power among those players, and the legal, political and economic circumstances involved. In this case, however, we believe that scenario number four has obtained: The classic iron triangle in northern Nevada, which historically exercised predominant control over water resource decision-making, has been broken. This is not to say that irrigated agriculture in northern



Nevada has been dealt its death blow, however; it simply means that these interests cannot count on exercising the amount of control over water resource allocation and use issues that they possessed in the past. This is in large part because the "framework" within which public resources issues are being decided is no longer primarily a local one. Instead, the congress is considering national issues in deciding these types of questions. This change in the *status quo* may be a permanent one.

If this is indeed the case, will a new iron triangle emerge to take its place? This is doubtful. In large part this is because no one private leg of a potential iron triangle, either environmental interests or Native Americans, is positioned to assume that function. Rather, a multiplicity of interests has been accommodated in this policy-making process. There is no reason to believe, either, that this will not continue to be the case in the future. These interests are reflective of newly recognized values and needs, which are themselves reflective of changed socio-economic and political conditions. As more change occurs, the current set of interests may find itself having to accommodate newer interests and values. While it should not be suggested that all future negotiated settlements will result in the kind of process and outcome(s) described herein, this is a strong possibility. The sets of interests that are included and accommodated, of course, will depend on the players, the distribution of power among those players, and the particular legal and political climate in which each settlement is negotiated and concluded. The task is to focus upon the upcoming negotiations as each unfolds. Close scrutiny of the results will undoubtedly provide us with answers to questions posed here and elsewhere in the literature regarding the future of western water policy.

## NOTES

<sup>1</sup>Wayne Mehl, Legislative Director, Office of Senator Harry Reid, Personal Interview (20 May 1991); Norman Staller, Economist, Water Resources Branch, Office of Management and Budget, Personal Interview (21 May 1991).

<sup>2</sup>Daniel C. McCool, "Water Welfare and the New Politics of Water," *Halcyon* 14 (1992), 85-102.

<sup>3</sup>Douglass Cater, *Power in Washington* (New York: Random House, 1964), 1-238.

<sup>4</sup>J. Leiper Freeman, *The Political Process* (New York: Random House, 1965), 1-344.

<sup>5</sup>Ernest S. Griffith, *Congress: Its Contemporary Role* (New York: New York University Press, 1961), 1-268.

<sup>6</sup>Randall B. Ripley and Grace A. Franklin, *Congress, the Bureaucracy and Public Policy* (Pacific Grove, CA: Brooks/Cole Publishing Company, 1984), 10.

<sup>7</sup>Philip O. Foss, *Politics and Grass: The Administration of Grazing on the Public Domain* (Westport, CT: Greenwood Press, 1960), 1-236.

<sup>8</sup>See Paul Culhane, *Public Lands Politics* (Baltimore, MD: Johns Hopkins University Press/Resources for the Future, 1981), 1-398; Roger H. Davidson, "Breaking Up Those 'Cozy Triangles': An Impossible Dream?" in Susan Welch and John G. Peters, eds. *Legislative Reform and Public Policy* (New York: Praeger Publishers, 1977), 30-53; Richard O'Connor, *The Oil Barons* (Boston: Little, Brown, 1977), 1-502; Robert H. Salisbury et al., "Who Works with Whom? Interest Group Alliances and Opposition," *American Political Science Review* 81 (4, 1987), 1217-1234.

<sup>9</sup>Ripley and Franklin, *Congress, the Bureaucracy and Public Policy*, 5-10.

<sup>10</sup>Jeanne Nienaber Clarke and Daniel C. McCool, *Staking Out the Terrain: Resource Differentials*

*Among Natural Resource Management Agencies* (Albany, NY: State University Press of New York, 1985), 1–189; John Ferrejohn, *Pork Barrel Politics: Rivers and Harbors Legislation, 1947–1968* (Stanford, CA: Stanford University Press, 1977), 1–288; Helen Ingram, “Politics, Markets, Society and Water Resources,” *Halcyon* 14 (1992), 57–71; Daniel C. McCool, *Command of the Waters: Iron Triangles, Federal Water Development, and Indian Water* (Berkeley, CA: University of California Press, 1987), 1–321; Ripley and Franklin, *Congress, the Bureaucracy and Public Policy*, 1–193.

<sup>11</sup>Tim. R. Miller, “Recent Trends in Federal Water Resource Management: Are the ‘Iron Triangles’ in Retreat?” *Policy Studies Review* 5 (2, 1985), 395.

<sup>12</sup>Clarke and McCool, *Staking Out the Terrain*, 1–33; McCool, *Command of the Waters*, 5.

<sup>13</sup>Marc Reisner and Sarah Bates, *Overtapped Oasis: Reform or Revolution for Western Water?* (Washington, DC: Island Press, 1990), 1–35.

<sup>14</sup>Clarke and McCool, *Staking Out the Terrain*, 11.

<sup>15</sup>Reisner and Bates, *Overtapped Oasis*, 1–35; McCool, *Command of the Waters*, 6–11.

<sup>16</sup>*Ibid.*

<sup>17</sup>McCool, *Command of the Waters*, 226–44; Miller, “Recent Trends,” 395–96.

<sup>18</sup>Reisner and Bates, *Overtapped Oasis*, 24.

<sup>19</sup>McCool, “Water Welfare,” 85–102.

<sup>20</sup>*Ibid.*

<sup>21</sup>Ingram, “Politics, Markets, Society and Water Resources,” 57–71; McCool, “Water Welfare,” 85–102; Miller, “Recent Trends,” 395–412; Michael R. Moore, “Native American Water Rights: Efficiency and Fairness,” *Natural Resource Journal* 29 (1989), 763–91.

<sup>22</sup>Reisner and Bates, *Overtapped Oasis*, 23–6.

<sup>23</sup>*Ibid.*, 32.

<sup>24</sup>M. T. El-Ashry and D. C. Gibbons, *Troubled Waters: New Policies for Managing Water in the American West* (Washington, DC: World Resources Institute, 1986), 1–89.

<sup>25</sup>McCool, *Command of the Waters*, 87; Reisner and Bates, *Overtapped Oasis*, 27–30.

<sup>26</sup>Reisner and Bates, *Overtapped Oasis*, 30.

<sup>27</sup>*Ibid.*

<sup>28</sup>*Ibid.*, 33–4.

<sup>29</sup>*Ibid.*, 34.

<sup>30</sup>*Ibid.*

<sup>31</sup>Victor Brajer and Wade E. Martin, “Water Rights Markets: Social and Legal Considerations,” *American Journal of Economics and Sociology* 49 (1, 1990), 35–43; W. R. Zach Willey and David Yardas, *Least Cost Water Supply Planning in the Truckee and Carson River Basin* (Berkeley, CA: Environmental Defense Fund, 1987), 1–8.

<sup>32</sup>Jurgen Schmandt, et al., *State Water Policies: A Study of Six States* (New York: Praeger Publishers, 1988), 1–13.

<sup>33</sup>Brajer and Martin, “Water Rights Markets,” 35–43; McCool, “Water Welfare,” 85–102; Moore, “Native American Water Rights,” 763–791.

<sup>34</sup>*Winters v. U.S.*, 207 U.S. 564 (1908).

<sup>35</sup>Brajer and Martin, “Water Rights Markets,” 42.

<sup>36</sup>*Ibid.*

<sup>37</sup>Bonnie G. Colby, et al., “Mitigating Environmental Externalities through Voluntary and Involuntary Water Reallocation: Nevada’s Truckee-Carson River Basin,” *Natural Resource Journal*, 32 (1991), 757.

<sup>38</sup>Willey and Yardas, *Least Cost Water*, 42.

<sup>39</sup>Colby, et al., “Mitigating,” 757–83; McCool, “Water Welfare,” 85–102.

<sup>40</sup>McCool, *Command of the Waters*, 233–34.

<sup>41</sup>Colby, et al., “Mitigating,” 757–83.

<sup>42</sup>McCool, *Command of the Waters*, 248–155; McCool, “Water Welfare,” 85–102.

<sup>43</sup>Moore, “Native American Water Rights,” 763–91.

<sup>44</sup>California Department of Water Resources, *Truckee River Atlas* (1991), 1–4; U.S. Senate, Select Committee on Indian Affairs, *Providing for the Settlement of Water Rights Claims of the Fallon Paiute Shoshone Indian Tribes*, Report No. 101–555 (Washington, DC: U.S. Government Printing Office, 25 October 1991), 8–9.

<sup>45</sup>W. Turrentine Jackson and Donald J. Pisani, *A Case Study in Interstate Resource Management: The California-Nevada Water Controversy 1865-1955* (Davis, CA: California Water Resources Center, May 1973), 1-11; W. Turrentine Jackson and Donald J. Pisani, *Lake Tahoe Water: A Chronical of Conflict Affecting the Environment* (Davis, CA: Institute of Governmental Affairs, 1972), 1-3.

<sup>46</sup>*Ibid.*; W. D. Rowley, "The Newlands Project: Crime or National Commitment?" *Nevada Public Affairs Review* 1 (1992), 39-43.

<sup>47</sup>*Ibid.*

<sup>48</sup>*Truckee River General Agreement* (1915).

<sup>49</sup>California Department of Water Resources, *Truckee River Atlas*, 5-27; Jackson and Pisani, *A Case Study*, 1-16.

<sup>50</sup>*Ibid.* In 1973, the United States government attempted to have the provisions of the *Orr Ditch* decree reconsidered, at first by requesting the U.S. Supreme Court to hear the government's case under the original jurisdiction of that court (*United States v. Nevada and California*, 412 U.S. 534). The Supreme Court refused to hear the case. The U.S. government then took its case to the United States District Court for Nevada, where the District Court held that the *Orr Ditch* decree was *res judicata* and could not be challenged in court; although the 9th Circuit Court of Appeals reversed, the United States Supreme Court rendered a decision in 1983 declaring that the *Orr Ditch* decree was indeed *res judicata*, thereby ending any lingering legal uncertainties regarding the *Orr Ditch* decree (*Nevada v. United States*, 463 U.S. 100, 143-44).

<sup>51</sup>Marc Reisner, *Cadillac Desert: The American West and Its Disappearing Water* (New York: Penguin Books, 1987), 115-124; Reisner and Bates, *Overtapped Oasis*, 17-22.

<sup>52</sup>Timothy G. Haller, "The Legislative Battle Over the California-Nevada Interstate Compact: A Question of Might versus Native American Right," *Nevada Historical Society Quarterly* 32 (3, 1989), 198-221.

<sup>53</sup>*Ibid.*

<sup>54</sup>*Ibid.*

<sup>55</sup>U.S. Senate, *Providing for the Settlement*, 9.

<sup>56</sup>Haller, "The Legislative Battle," 198-221; Mehl, Personal Interview; D. Snape, Lobbyist for Pyramid Lake Tribe, Personal Interview (22 May 1991).

<sup>57</sup>H. S. Burness, *et al.*, "United States Reclamation Policy and Indian Water Rights," *Natural Resource Journal*, 20 (1980), 807-25; Haller, "The Legislative Battle," 198-221.

<sup>58</sup>Martha C. Knack and Omer C. Stewart, *As Long as the River Shall Run: An Ethnohistory of Pyramid Lake Indian Reservation* (Berkeley, CA: University of California Press, 1984), 9-16.

<sup>59</sup>Elmer Rusco, "The Truckee-Carson-Pyramid Lake Water Rights Settlement Act and Pyramid Lake," *Nevada Public Affairs Review* 1 (1992), 9-14; U.S. Senate, *Providing for the Settlement*, 9-16.

<sup>60</sup>Robert Pelcyger, Pyramid Lake Tribal Attorney, Personal Interview (6 March 1991).

<sup>61</sup>It should be noted here that the Lahontan cutthroat trout have been restored to Pyramid Lake through a hatchery program; the cui-ui have also benefitted from this program—indeed, it may have saved both from extinction. What had not been achieved by this program at the time settlement negotiations began, however, was enough water to restore the fishery, which would have taken enough water to allow natural spawning to occur in the lake. See Rusco, "The Truckee-Carson-Pyramid Lake Water Rights Settlement and Pyramid Lake," 9-14.

<sup>62</sup>*Carson-Truckee Water Conservancy District v. Clark* 741 F.2d 257 (9th Cir. 1984), cert. den. 53 U.S.L.W. 386 (26 March 1985).

<sup>63</sup>32 Fed. Reg. 3098 43 C.F.R. 418.

<sup>64</sup>43 C.F.R. 418 (a).

<sup>65</sup>*Pyramid Lake Paiute Tribe v. Morton* 354 F. Supp. 151 (D.D.C., 1973).

<sup>66</sup>*Truckee-Carson Irrigation District v. Secretary*, 782 F.2d (9th Cir., 1984), cert. den. U.S.L.W. 3867 (11 June 1985).

<sup>67</sup>*Pyramid Lake Paiute Tribe v. Hodel*, 887 F.2d 364 (1989).

<sup>68</sup>U.S. Senate, *Providing for the Settlement*, 17-19.

<sup>69</sup>Pelcyger, Personal Interview; U.S. Senate, *Providing for the Settlement*.

<sup>70</sup>George Laycock, "What Water for Stillwater?," *Audubon Magazine* (November 1988), 14-25; U.S. Senate, *Providing for the Settlement*.

<sup>71</sup>*Ibid.*

<sup>72</sup>*Ibid.*

<sup>73</sup>U.S. Senate, *Providing for the Settlement*.

<sup>74</sup>Blaine Rose, Regional Manager for Senator Harry Reid, Personal Interview (14 March 1991).

<sup>75</sup>Pelcyger, Personal Interview.

<sup>76</sup>Mehl, Personal Interview; Pelcyger, Personal Interview; P. Zell, Executive Director of Senate Select Committee on Indian Affairs, Personal Interview (22 May 1991).

<sup>77</sup>It should be noted here, however, that the position taken by TCID and its supporters is that they were squeezed out of the negotiation process—or never really allowed to participate to begin with.

<sup>78</sup>Frank Dimick, Western Relations Liaison, Bureau of Reclamation, Personal Interview (21 May 1991).

<sup>79</sup>Mehl, Personal Interview.

<sup>80</sup>The important thing about the outcome of years of litigation as it stood in 1987, when Senator Reid began his effort, was that all sides had won some victories but no one felt secure or saw a way to get more of what they wanted through litigation. This was as true for TCID as it was for the other players. It still had extensive legal rights to use of water from both the Carson and Truckee rivers, but found its Truckee use being reduced by the courts. That TCID misperceived its situation and thought it did not have to compromise further is another likely explanation for the withdrawal from the negotiations (Elmer Rusco, Personal Communication, December 1993).

<sup>81</sup>Mehl, Personal Interview; Pelcyger, Personal Interview.

<sup>82</sup>*Ibid.*

<sup>83</sup>104 Stat.3289 (1990).

<sup>84</sup>Sec. 201–204.

<sup>85</sup>Sec. 209(J)(2).

<sup>86</sup>It should be noted that there is now being developed a new Operating Agreement for the Truckee River which will include, among other things, the results of the tradeoff between Westpac and the Pyramid Lake Tribe embodied in the Preliminary Settlement Agreement. The new OCAPS agreement must include provisions to alter the present court-ordered rules (floriston rates) so as to provide maximum benefit to the Pyramid Lake fishery. See Elmer Rusco, "The Truckee-Carson-Pyramid Lake Water Rights Settlement Act and Pyramid Lake," *Nevada Public Affairs Review*, 1 (1992), 13.

<sup>87</sup>Mehl, Personal Interview; Zell, Personal Interview.

<sup>88</sup>Tim Hay, Legislative Counsel, Office of Senator Richard Bryan, Personal Interview, (20 May 1991); Mehl, Personal Interview.

<sup>89</sup>Tom Hebert, Water Resources Assistant, Senate Agriculture Committee, Personal Interview (23 May 1991).

<sup>90</sup>*Ibid.*

<sup>91</sup>Hay, Personal Interview; Joseph Hunter, Deputy Assistant Secretary of Water and Science, Department of Interior, Personal Interview (21 May 1991); Mehl, Personal Interview; Rose, Personal Interview; Snape, Personal Interview; Zell, Personal Interview.

<sup>92</sup>Staller, Personal Interview.

<sup>93</sup>Coalition for a Negotiated Settlement, *An Economic Analysis of Water Use on the Newlands Project* (1990), 1–5.

<sup>94</sup>*Ibid.*, 3.

<sup>95</sup>*Ibid.*

<sup>96</sup>Dimick, Personal Interview.

<sup>97</sup>Hunter, Personal Interview.

<sup>98</sup>Bill Bettenburg, Deputy Assistant Secretary of Indian Affairs, Department of Interior, Personal Interview (23 May 1991).

<sup>99</sup>*Ibid.*

<sup>100</sup>Staller, Personal Interview.

<sup>101</sup>Mehl, Personal Interview; Snape, Personal Interview.

<sup>102</sup>Hay, Personal Interview.

<sup>103</sup>Mehl, Personal Interview; Snape, Personal Interview.

<sup>104</sup>Mehl, Personal Interview.

<sup>105</sup>Mehl, Personal Interview; Snape, Personal Interview.

<sup>106</sup>Janet E. McKinnon, "Water to Waste: Irrational Decisionmaking in the American West," *Harvard Law Review* 10 (2, 1986), 503–32; Sandra Postel, *Water for Agriculture: Facing the Limits* (Worldwatch Institute, 1989), 1–54; Richard W. Wahl, *Markets for Federal Water: Subsidies, Property Rights and The Bureau of Reclamation* (Washington, DC: Johns Hopkins University Press, 1989), 1–308.

<sup>107</sup>Mehl, Personal Interview; Pelcyger, Personal Interview.

<sup>108</sup>To be fair to the TCID, as Rowley has pointed out, "although hard choices remain ahead for the users of water in western Nevada. . . . [t]he hardest choices [now] will have to be made by the farmers and ranchers of the Fernley-Fallon area." We must recognize, after all, that this "community," which was created on the "basis of diverted river water, rightly refuses to believe that its founding and development was a mistake. It was an experiment based on a rather grand dream which has nourished a stable community in a state that has rarely enjoyed stability." Although environmental and other problems did ensue, "these can be addressed by government and community efforts in the future"; Rowley, "The Newlands Project: Crime or National Commitment," 43. Indeed, such efforts are currently underway. An attempt is being made to address the concerns of the community, and incorporate those concerns into the decisionmaking process, as implementation of this act proceeds apace.

<sup>109</sup>As Elmer Rusco noted in his excellent critique of this article, however, while the possibility that funds may not be appropriated to carry out all the provisions of this law is certainly present, there are strong reasons to believe that this will not happen. See Elmer Rusco, "The Truckee-Carson-Pyramid Lake Water Rights Settlement Act and Pyramid Lake," *Nevada Public Affairs Review* 1(1992), 9–14.

<sup>110</sup>McCool, *Command of the Waters*, 11.

<sup>111</sup>Moore, "Native American Water Rights," 787.