An Interview with

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Los Angeles Department of Water and Power

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The interviewer is Dick Nelson

NELSON: Ok, Ed, why don't we start with a little background, where you were born, schooling, and how you got to the City Attorney's office.

Schlotman: Ah, the real story. I'm a rarity, a native Californian. I was born in Los Angeles and we lived in Glendale. My dad was in construction. We lived over on Catalina Island for a year when I was a baby, so I had my first aircraft flight when I was under a year old in the old seaplane commuters, and I remember it all very well, of course. We then lived in Seal Beach for about nine years.

In 1949, we moved to Eaglerock where I graduated from St. Dominic's parochial school, attended Loyola High School, University and Law School. So I have been well and truly educated by the Jesuits. I have a BA in political science and a Juris Doctor, so if we were in Europe you could call me doctor, but we don't do that here.

I had received two student military deferments, so after law school

graduationin 1964, and not wanting to go into the infantry, I did the Dan Quayle thing, and joined the reserves. I returned from active duty training at the time of the 1965 Watts Riots.

NELSON: Were you doing legal business in the military?

SCHLOTMAN: No. I hadn't passed the bar at that time. I didn't really want to go into the JAG (Judge Advocate General) at that time. I probably could have, but I figured I was probably going to be doing the law all my life so I didn't need to double-up on it. I didn't want to be an infantry grunt either, I'm not really the athletic-type you know. So, I looked for something else and found an intelligence unit, so, I worked in military intelligence.

After my return to L.A., and while I was casting around for a job, my reserve unit Commanding Officer asked me if I wanted to talk to someone in the City Attorney's Office.

He knew a lady who was a secretary there and thought she could probably get me an interview with somebody to at least let them know who I was. It was one of those, "Introduce yourself, not that you're really looking for a job right now" things.

I figured why not? I really didn't know anything about the office so I went down and talked to a nice gentleman by the name of Weldon Weber. We chatted for probably thirty to forty-five minutes on a number of subjects, none of which had anything to do with the law or the City Attorney's Office. The next day he called and offered me a job as a law clerk. It turned out that Mr. Weber was the executive assistant and the lady who had gotten me the interview was one of the executive secretary's.

I started as a law clerk in the fall of '65, doing small claims work.

It was primarily a collection service. The city has a business tax which is a gross receipts tax. It is self-reporting. A lot of people get the certificate and don't report their receipts for any number of reasons. So, that is where the collection process begins.

The cases with small amounts at stake are turned over to the law clerks. We would sometimes file fifty cases at a time in small claims court and do a lot with form letters. I didn't think the form letters were very effective, so I played with them and ended up with two or three different forms. There were two secretaries who worked with me off and on doing this - and I'm sure they both made more money than I did at the time, which probably irritated the heck out of them.

NELSON: Did you represent the City?

SCHLOTMAN: Yes. These were all default prove-ups. They wouldn't let you do anything if it was a contested tax matter in small claims. All we could do was, what is called a default prove-up. We would go over once a month, but it was mostly in the office, chasing people down. Looking through DMV, and things like that.

It was amazing, people would move three or four times a year, obviously skipping bills, and other things. But they would faithfully change their drivers license address. Why, I don't know, but we had no trouble finding them. One anecdote, then I'll move on to other things.

One of the things you do is try to levy on judgements, that is, collect them. We had a judgement, I don't remember if I got it or someone else had. Anyway, it was for one hundred and eighty dollars. So, I checked DMV and found that the guy had a nice car. So I did a writ of execution on the car, and lo and behold, the sheriff's seized it two weeks after the last payment was made on his 1957 T-Bird.

It sat a while, then we got a call from Jerry Renaoris), a well respected lawyer who handled mostly criminal cases, I think. Jerry said it wasn't the T-Bird owner, but his son, because the father had been in San Quentin. I talked to Tom Bonaventura, who I worked for. Incidently, Tom just retired as Chief Assistant City Attorney. Tom told me who Jerry was and to ask for a handwriting sample for the police to compare with the signature on the tax certificate, and if they didn't match, we'll release the car.

I passed this all on to Jerry, but we never heard anything from him. Thirty, sixty days went by, all the time daily storage fees were mounting. I figured that when it came time to sell the car, I would go down and bid on it. Probably me and everyone else in town. Even then, a '57 T-Bird was a big ticket item. But, he paid it off on the last day. The storage fees were greater than the judgement, and we never received the handwriting sample. That was interesting.

Anyway, I joined the office in '65 as a law clerk. When I passed the bar the following spring I moved into the criminal branch which was the normal progression. I was a prosecutor from June 1966, actually, I began doing hearings in May, before I was sworn in. This is a task hearing officers do now. These are citizen complaints that probably will not be filed, but they need a forum for everybody to vent a bit. Once in a while a criminal case grew out of one of those hearings.

You went through a regular routine, starting with traffic tickets, which were non-jury trials, then moved up to jury traffic tickets and drunk driving cases. Then, depending upon how many people were in the cycle and how fast things were going you would end up doing high grade misdemeanors, which meant anything other than traffic. From petty theft to prostitution to vehicular manslaughter to obscenity

cases. Between 1966 and 1970, I did stints in both traffic and high grade master calendar courts. In this you were responsible for anywhere from sixty to a hundred and fifty cases a day that you get with the judge which you get assigned out to the various trial courts. This entailed a lot of dispositon and coordination.

NELSON: How much time were you in court?

Schlotman: Every day. I've probably tried between 125 and 150 jury trials. That sounds impressive, but remember some were traffic cases.

I remember one week, for example, where somebody was putting the drunks away in arraignment court. Those were 647F charges of the penal code. The defendents did not want to be put away for ninety or one hundred and twenty days, or whatever it was. So they would plead not quilty and not waive time, which meant that we had to bring them to trial within thirty days. So, they would come uptown for trial in about twenty-one days. They were assigned to what was called, public defender, or custody court, where they were put in the hands of public defenders.

What would happen is that we would go through the regular stuff during most of the day. The cases that you could despose of, or plead out, or do whatever else. There was a deputy assigned there and a couple of public defenders. We could get maybe twenty cases a day in that court. At the end of the day, we would do one or two jury trials.

I remember one time doing seven jury trials, one a day. I lost the first five, but won the last two. Overall, I handled a lot of jury trials.

In 1970, I was asked to head up the obscenity section of our office. At that time we had a relatively fast lawyer turnover on the criminal side of the office. When you joined the office you didn't think you

were going to be a career prosecutor. You thought you would be there a couple of years, get some trial experience, then move on to the civil side, or outside.

To the extent I had thought about it, I had probably thought the same way. But frankly, I enjoyed criminal work. I was making a decent salary for the first time in my life and had bought a car and had done a little travel, stuff like that. I was in no hurry to move on. I hadn't married at that time.

So, in 1970, I was maybe the most senior lawyer in the criminal branch, with all of four-plus years of experience. This was not a lot of experience, but, that's the way it worked out.

Larry Mason, the guy who was heading the obscenity unit, moved on to the District Attorney's office. Not knowing any better, I agreed to replace him. The named was changed to special prosecutions, or special trials unit, soon after I took over. We tried obscenity cases involving the display and sale of obscene materials. We also did "red light" abatement cases, which were quasi-criminal, quasi-civil action to shut down a house of prostitution, or gambling establishment. In this case is was prostitution. The houses of prostitution were, of course the massage parlors.

Police would go in undercover, engage in conversation with the masseuses, who would invariably make an offer of some kind. This would be recorded in a declaration. When we had forty to fifty declarations to show a pattern of conduct we would go to court to obtain an injunction to shut the place down.

One of the matters that took a long time was when the police went out on a raid on a pornograper; he was a distributor, he didn't make films or anything like that. He purchased materials from others and

distributed the material to mail order customers off a mailing list. The police went out with a search warrant and searched his premises and business, which I believe was in the valley. That was OK, it was routine, but they invited IRS intelligence and their somewhat unique, at that time anyway, portable copiers.

They went through the guy's stuff with a fine tooth comb and copied everything for about three days. Of course this turned into the mother of all motions to suspress illegally seized evidence. We tried this motion before a youngish municipal court judge, Ron George, who is now the Chief Justice of the California Supreme Court. We went back and forth because he was sitting in West L.A. When he would have an afternoon to do something on it, we'd go out there and do some more on the motion, so it took some time.

The defense attorneys were two young guys, just out of the U.S. Attorney's Office. They were primarily doing federal defense and had gotten this case. Their client guy was a nervous acting person who liked the fine life-style. He drove a fancy car; drank good wine.

We went back and forth and they bought us lunch once or twice, at a nice place on the westside and we would chat about this and that. I can't remember if it was them or their client who brought in a lawyer from Cleveland. He was not at all glamorous or anything like that. He told us he had represented Sam Sheppard before the U.S.Supreme Court. He said it was his theories that F. Lee Bailey got all the credit for. True or not, I don't know, but it was a fun story and I don't think the guy was pulling our legs.

Anyway, we finally finished the motion and the evidence was upheld. During the five years I did porno this was the first and only time during testimony that the question of Mafia influence arose. The guy's

mailing list had been stolen and he testified he had to go back to New York or Boston and literally kiss the Godfather's ring to get his list back. Prono was pretty much independent out here until then. Milton Lyros was the big fish out here and he was independent as far as I know.

Two or three years later I read about Eileen Eaton's son, being murdered. Eaton was a long-time boxing promoter out here. He was a step or adopted son who was a private detective. Well, the guy convicted of the murder was the porno guy. Very unlikely, in my mind. If you had even met the prono guy. He just didn't strike me as the murdering type.

Anyway, I had been doing this type of work until 1975, and was the senior man on the trial side. Frankly, I was becoming tried of doing frequent trials. Although I liked criminal, I was ready to go on to something different, but not civil liability trying tort cases. So I was wondering if there was some sort of administratve position I could get into in criminal or something similar.

Fortunately, I was asked to interview for a new opening over at Water and Power. I didn't know anything about the goings-on over there. I didn't know if I wanted to do that or not. Larry Hoffman, who had been brought in by Bert Pines, was number two in the office. I had the pleasure of meeting with him and having him try to be charming for half an hour trying to talk me into going for the interview.

An example of Larry's personality. He was thirty four, or thirty five at the time. He had a quadruple bypass. This is after I had gone to Water and Power. Ed Farrell and I had gone over to see Bert on something. We're in Bert's office when a tape came in from Larry in the hospital. He dictated a tape that he wanted his secretary to type up to pass on thank-you messages to the members of the city council who

had sent cards, and this and that. So in his hospital bed, with a quad by-pass, he's still trying to work.

He left the office not too long after that and my guess is that Bert forced him out for his own good.

NELSON: One last question before we get to Water and Power. How does one get the high profile cases, i.e., O. J. Simpson?

SCHLOTMAN: We don't. There are two types of crime in California, misdemeanors and felonies. What is the distinction between the two? If you can do a year or less in county jail, it's a misdemeanor. If you can do a year or more in a state prison, it's a felony.

There are any number of crimes that can go either way depending upon the sentencing. So, you could be tried as a felon, but convicted of a misdemeanor. If it's tried as a misdemeanor, it can't go the other way.

The police essentially bring a case to you and ask you to file a complaint in court. This is a fairly routine process. There are well established patterns as to who goes where. If it's a battery, a couple of guys fighting, we get it. If they start shooting at each other with guns, it probably goes to the District Attorney's office. Although not neccesarily. I had one case when I was in Division 20 which was the Master Calendar Court, where a guy had shot through a door five times, hit the guy behind the door five times and the DA didn't think he had enough evidence of intent to kill. So, we got it as an assault and battery, or something. My gosh, If they ever lose a case, they should be ashamed of themselves. You mean five out of five and you don't know the guy is there?

On the other hand I had the little old couple come in from South Central, who had probably been drinking and he was charged with cutting

her up with a knife. They wanted the charges dropped and this was during the time when this was sometimes done in family situations, which is not true today. Their story was something like, "I cut her a little bit, and she cut me a little bit, but it's all over now. "Oh, OK, You're back together now?' "Yes" "OK. we'll compromise the charges."
Anyway, the charges come in that way just out of the arrest situation. It kinda tells you whether it's a serious crime or not.

There are cases where the DA will reject them, and file them as a misdeamenor. The DA as a matter of policy, rejects certain kinds of cases. We would then try them.

In the spring of 1975 I interviewed at Water and Power. Maynard Asper and Steve Powers did the interviewing. It was not Ed Farrell directly, but I did talk to him. It was a new job and I would be working for Ken Downey. That was good because you weren't picking up someone's caseload or work assignments.

I was offered the job and said I would have to think about it. I talked to Dave Perez, my boss at criminal, who is now on the Superior Court bench. I really didn't have any interest in civil law at the time, plus, I enjoyed what I was doing in criminal. It was different and exciting and moves along. But, I made the decision that it was time to go, accepted the job and within six months realized it was the best move I had ever made.

NELSON: Do you eliminate your changes of getting on the bench by coming to Water and Power?

SCHLOTMAN: No, you can always apply. I have never been terribly interested, probably because of the size of the application. After I

have practiced for about five years, I thought it might be the fun thing to do, go on the muni bench, but never pursued the idea.

So, I made the decision to come over here. I didn't know much. Ask me in 1975 where our water came from and I would tell you it came from a tap, what else? Really, that was pretty much the state of my knowledge regarding water. Even though, my Dad had worked for the Department at one time. My Dad was in construction, cranes and derricks, hoisting equipment, Local 12, Operating Engineers union. So he moved around, particularly before he married. He worked overseas on two or three jobs.

I remember him telling me stories about working up in the Bishop area, so I know it must have with the Department. That was in the '30s, when things were not real friendly. He used to go into a liquor store or market to buy cigarettes or beer on pay day. But he would cash his check elsewhere. So he would pay cash in that place. He became friendly with the owners or help and they with him because they didn't know who he was. He told me that one time a guy walked in while he was there and tried to cash a Department pay check, and basically got cursed up one side and down the other. My Dad's comment was, "They really hate us up there." That always stuck with me.

So, I came over here and started working with water system stuff. I came over to work for Ken. I remember one of the first assignments he and Duane Georgeson gave me. They were sitting around in Ken's office one day, probably scheming and conspiring about something, and they presented me with some problem, I forget what it was now, and asked me to take a look at it. I was to write some proposed action. I'm sure they were trying to figure out where my head was at and how I thought, which was as much of it as anything.

So, I researched the problem and proposed a course of action. I was

running through a number of things, and about two-thirds of the way through this, Ken said, "Down Fang!" which is where the "Fang" nickname came from. It turns out that the individual who was the subject of my proposal was one, John K. Smith, Inyo County Administrative Officer and Department lessee. They thought it would be less that politic to hang, drawn and quarter him. Anyway, the nickname stuck for a number of years. Duane, Paul Lane, and Ken were the principal name callers, and others picked it up, but with the retirements, etc., I think it's pretty much been forgotten now, except by a couple of people.

My first involvement with the Aqueduct, with the water business, was in June 1975. We had flown up to Sacramento for a hearing, I just to listen, this was purely "getting up to speed stuff" for me. The hearing concerned an interim pumping order in Inyo v Yorty (Sam Yorty, L.A. Mayor), which was filed in 1972. The hearing was before the Court of Appeal. This was a situation where we had obtained an intertim pumping order, or Inyo had, depending upon your viewpoint, that they were unhappy with from the trial court, and had appealed it to the Court of Appeal. This was pending the writing of the Environmental Impact Report (EIR).

Let me go through the sequence of events. The Second Los Angeles Aqueduct was completed in June 1970. The groundwater pumping phase was about fifty percent along at that time, or still under construction. The California Environmental Quality Act (CEQA) was passed in the fall of 1970. The Inyo v Yorty case was filed in 1972. The Department prevailed in the trial court in Sacramento, which means the court said we did not have to write an EIR on this aqueduct business.

Inyo County filed a writ of supersedeas, with the Court of Appeal in Sacramento. It was treated as a petition for an original writ of

mandate by the Court of Appeal, who granted the appeal and wrote the the opinion (32CA3J795) rendering a decision that said the Aqueduct was separate, but divisible from the groundwater pumping project, because of that fifty percent completion. This was utter nonsence of course. It was a fictional split.

Nevertheless, that got us into a program of writing adequate EIR's from 1973, until the case was finally discharged in 1997.

NELSON: What prompted Inyo County to file the suit in 1972?

SCHLOTMAN: That was before my time so I can only speculate. No one knew much about the new CEQA. Everyone was trying to figure out what this statute was, and what it did. I think the Inyo Board of Supervisors had asked the Department for some kind of report or something about the Second Aqueduct. The Department did a report, and for whatever reason, someone figured out that this was some sort of tool that they could use.

There were a lot of cases going on at that time as to what CEQA applied to, and what it didn't. There were questions concerning completed projects, or how far along did they have to be before they were exempted, and that sort of thing. This was early on and there was a lot of litigation in this area. Our project sort of fit into that category and the Court basically made a decision that said, in effect, "We're not going to let you out entirely." It could have easily gone the other way.

The Court basically said there were three sources of water. Increased Mono Basin diversions, changes in water management practices for the farmers and ranchers, which really started in 1968 with the new lease cycle, and increased groundwater pumping.

The opinion focused on the increased groundwater pumping and said that

it was a separate, but divisible project. They pretty much left everything else alone. They left the aqueduct alone as well as the Mono Basin diversions and the ranch irrigation policy alone.

I don't remember if the Department took the opinion to the State Supreme Court of not, which is always discretionary. In any event, if we did, we didn't get there. Therefore, the Department was obliged to write an EIR.

NELSON: What did you think of Ken, when you first met him. Were those Water and Power attorney's a little different from those you had been associating with?

SCHLOTMAN: Lawyers are all individuals. So you run into a variety of personalities whether you're in criminal or civil. We had a guy in criminal for example who we called "Wild Bill,". But, as you know, Ken is somewhat larger than life, particularly when he come booming into a room, or rubs his back on a door frame. The building shakes. It was a lot of fun working for Ken. Dispite his somewhat rough looking exterior perhaps, Ken is a lot more intellectual than I'll ever be. You wouldn't know that just to look at him. You need to talk to him and get to know where he is coming from, what he reads and doesn't read, and things like that. I worked for him originally, then it segued to where we were working together and that was a gentle process. He was very easy to work for and with.

NELSON: Ok, let's go back to groundwater pumping.

SCHLOTMAN: That was in June 1975, and my first experience with any of this. At that time Lajoie Harold "Buck" Gibbons was carrying the spear for Inyo County. He was the county District Attorney when his

office did both criminal and civil work. I think he was DA when Charles Manson was arrested up there. So he was probably involved in charging him and bringing Manson to L. A.

NELSON: Did you find Inyo County representation adequate?

SCHLOTMAN: I think so. I wasn't looking at their papers at that point in time. It was Ken's case. I would do stuff to help him out. The Department did an EIR and I wrote part of the brief defending it. But, Ken was still doing the case and had the principal role.

Sometime after 1975 the Department released an EIR, which it had to defend in court and which it lost. I can't remember if Tony Rossman was involved at that time or not. Tony came in around 1978. I don't remember much about that brief, Ken must have done the majority of the work on it.

The Court criticized the Department for not having a "no-project" definition and not having a real project defined and other things. Part of our problem, I think, was in working through CEQA, and part may have been a "seige mentality," in not approaching the job with complete honesty. We probably tried to be too cute in the definition of what water was used for what. That's the impressions I now have instead of firm opinions.

NELSON: Was the Department being too cute?

SCHLOTMAN: Yeah, O yeah, at least the Court certainly thought so. Anyway, the approcah the Department used in writing the EIR was deemed inadequate. They said it was an inadequate document. That's where my impression come from a little bit. All I am saying is, that in hindsight, there is more merit in the Court's opinion than I

was willing to concede some, twenty or so years ago. Part of it was ignorance by the Department because nobody knew what to do with EIR's. It was probably Water System's first EIR and it was a learning process.

Inyo County brought Tony Rossman in around 1978 when the Department was beginning to write a second EIR. Tony, this is my speculation, told Inyo County, to take the bull by the horns. He said, in my speculation, "You're trying to regulate the Department and their water, but, if that's what you're trying to do you're doing it wrong. If you're trying to do that, do it! Don't pussyfoot around with EIR's and so forth."

In any event Inyo filed an action to require the Department to be subject to the state Public Utilities Commission (PUC), at least in Inyo County. That was Tony's case and it got to be my case.

That resulted in a state Supreme Court opinion, Inyo v CPUC, (California Public Utilities Commission) was the nominal defendent, we were the real defendent in the case. This resulted in a published opinion and I got to argue in front of of the Rose Bird court.

This resulted in an opinion, 26 or 28 Cal Third. I can never remember the citation for my supreme court case. The court upheld the Department's rights that it was not subject to PUC jurisdiction. But, it indicated that the legislature could subject the Department to PUC jurisdiction. Which, frankly, I think is wrong. But, they essentially invited the legislature to assert jurisdiction. The legislature did not. That's still the state of the law that the city's are not subject to PUC, but maybe, could be by the legislature. Although, if they tried it with the current court, it might be interesting.

In any event, we spent some time on that and we won. We could do what we want and they couldn't regulate us. Inyo's response to that, understand that the Department was working on the EIR through this

process, was to propose by referendum a groundwater management ordinance. So the county proposed a groundwater management ordinance, which, surprise, surprise, Inyo County voters overwhelmingly approved. The ordinance directly regulated groundwater management and export. Tony's hand was obviously in this one.

NELSON: Had Rossman replaced Buck Gibbons representing Inyo County in water matters?

SCHLOTMAN: Yes. I think they had split off civil actions into a county counsel's office by that time. Rossman was special counsel to the county. I don't know if Dennis Meyers was the first county counsel or not. He may have been.

In 1979 or '80, we filed two lawsuits against Inyo. One challenged their groundwater management ordinance EIR. The second suit challenged the ground management ordinance itself on every conceivable ground we could think of. We had some twenty-three or twenty-four causes of action. The last one was declaritory relief that brought everything else into it.

At this point, Inyo County had pretty much become my problem. Ken and I segued very casually as Mono Basin was rearing its ugly head around that time and Ken took the laboring oar on that one. I think the Stanford students research group was about 1978. I may be wrong on the date, but 1978 sticks in my head. But anyway Mono Lake was coming to the fore around that time.

The Department's second EIR came out about this time. In this we basically listened to the Court's opinion on the first EIR and defined the project as they had cited, "no-project" and all the other things. Well, we ran into a new Justice on the Court of Appeals, one Coleman

Blease, who, in my view, changed the ground rules in his opinion. He brought in the agricultural portion of surface water management practices and said that should have been considered as part of the Department's project. I don't know if he said part of the project, but it certainly should have been evaluated and considered as part of the water operations.

They always left the Mono water out of it. Because we hadn't done that, because the previous court didn't say we had to, and had defined it otherwise, Justice Blease didn't like our EIR. It was the only time we had drawn a dissenting opinion. We drew a dissenting opinion from one justice who basically said "They did as we told them to do we should let it go." Nevertheless, Justice Puglia the Presiding Justice, always went along with Justice Blease so we always lost.

I think Ken still worked on that brief. I think that was his as I was doing the other one. So we were both spliting up the Inyo stuff at that time. But, I remember working on that brief at some length, with, I think, Dave Oliphant, who was helping us.

Tony had written a brief, you might characterize it as one liners, "That's wrong, You're wrong here, Your immoral," just throwing out stuff. That's easy to do in a page or two, but it takes page after page to respond to it. Tony had, and has a certain knack for purple prose. "Once again the Imperial City of Los Angeles is imposing upon its colony in Inyo County," and stuff like that. But, it would be enough to send you up the wall. So, I remember working on it, but, it was still Ken's case at that time. I was doing the challange to the groundwater management ordinance. So, this was all going on during 1979, '80, '81. I think that opinion may have come out in 1979, but I won't swear to it.

Anyway, after that EIR, I basically had Inyo County and Ken had Mono. We filed our challenge to the groundwater ordinance and the EIR. Inyo County tried to tax us in what we though was in contravention of the Jarvis admendment (Proposition 13). We filed an action challenging their tax in San Diego.

In 1982, I think it was 1982, we filed these actions. The one on challenging the groundwater management ordinance moved along. Dennis Meyers was the Inyo County Counsel at that time. Dennis was a fairly young guy at forty-one. I think he came up from the L.A. County Counsel's office with the idea that here was a nice quiet cow county where he wouldn't have to work real hard. Of course, he stepped into a real hornet's nest of high profile, high pressure leading edge stuff.

The cap to this was a few years later Dennis was coming back from some political thing somewhere in Inyo, where he had probably had a glass of wine. I think Dennis enjoyed a glass of chardonnay from time to time. Someone was driving him home since he wasn't feeling well, Enroute, he had a massive heart attack. If he had been driving he would probably have died, by all accounts. He was driven right to the hospital, stablized and put on a "chopper" to Reno. He was out of action for several months.

I saw him later at a conference at Tahoe. He had lost a lot of weight and was looking good. He was still drinking a little chardonnay. He went on to become county counsel of Sonoma, came into a way bigger office, with ten to twelve people working for him, but a heck of a lot less pressure.

As far as I know Dennis is still there and happy doing what he is doing.

Greg James became Inyo County Counsel for awhile. He too came up out of

L.A. Greg was also the county Water Director. He seemed to be either at any time. Right now, he is Water Director, and will be there, probably as long as he wants to be.

They were good people to work with. They were our opponents, but you could reason and deal with them. Tony Rossmann faded in and out as needed. He's always been involved, increasingly or decreasingly, I would say.

NELSON: Has the Inyo staff increased?

SCHLOTMAN: Not really. But the Water Department has built up. Tony argued our challenge to the groundwater management ordinance. He was very much involved in that. He would gradually fade out. What happened is that Dennis and I decided to file cross motions for Summary Judgement on the ordinance. It was a legal question. The facts were not in dispute. We knew they adopted, we knew what they tried to do. So we filed the cross motions for Summary Judgement which said that the facts were not disputed. If we are right on the law, we win.

These are the ones the judges love because they get to make the hard decisions. They can't palm it off on a jury. We brought in an outside judge, pursuant to code of civil procedure Sec 394, Don Turner, from San Bernardino. He was a very fair judge. He listened to us and I remember we were in Superior Court in Independence in January, 1983, to argue the cross motions for Summary Judgement. I remember because I was going to have a hernia operation shortly after that.

Tony got up and argued, then I argued our case. We had written a massive document, about one hundred and fifty pages, as I recall, laying out our theory of the law and analyzing the water code, all eighty thousand sections of it, to establish that there was a comprehensive

scheme of law dealing with water and that the legislature had chosen not to regulate groundwater. That was the choice they had made, therefore the field of law was preempted and the county could not step into that vacuum and regulate it.

Judge Turner kinda allowed as how he hadn't read the briefs. Well, I took that as a signal to argue forever, so I argued for about four hours. I think I bored everyone to tears, but, what the heck, basic insecurity.

I didn't do so well in the morning by all accounts, but in the afternoon it went my way. Anyway, in June, Judge Turner granted most of our motion for Summary Judgement on all significant bases. So, the Department for the first time, althought we had won at the State Supreme Court action, but for the first time we had stopped Inyo from doing something.

NELSON: But Judge Turner was a Southern California judge.

SCHLOTMAN: Well, he was a neutral judge.

NELSON: Ed, can you describe the general setting in Judge Turner's court or chambers. Who was there? what kind, if any, support did you have?

SCHLOTMAN: There was a full house, all seats were taken. There were a fair number of Department people there. Inyo County was represented by Tony Rossmann who gave the argument on their behalf. I believe Greg James, as well as Dennis Myers, were present. The bulk of the audience was made up of Inyo County politicians and residents. Tony made the first argument which, as I said was not too long. I then presented my argument, part of which was in the morning before lunch with the

balance after we returned from lunch. I believe I may have argued for as much as four hours.

What I believe is that this decision led to Inyo's realitization that they had been litigating with us for a number of years and hadn't really gotten anything. We were still pumping, under interim orders, more than we had ever pumped before. Inyo had tried the direct approach and it hadn't worked. This, for the first time, by what they told us later, caused them to think that maybe they should sit down and talk to the Department.

The year before we had put together a political group to do just that called the Standing Committee and the Technical Group.

NELSON: Do you know how the Standing Committee was formed?

SCHLOTMAN: Greg James and I put it together as much as anyone. It was partly political, and by that I mean it was a decision by management and the political leadership that we needed a group to talk together. A forum, and Greg and I put that together.

NELSON: Who did it bring together?

SCHLOTMAN: The Standing Committee is composed of representatives of Inyo County and the City of Los Angeles. The Inyo representatives are a couple members of their Board of Supervisors, Water Director, County Counsel, and I think their CAO. They have one vote.

The L.A. representatives are the head of the Water System, the Department General Manager, someone from the City Council, the CAO, We have one vote. There is floating membership and it's all spelled out in a memorandum of understanding.

The point of this all was to get together as a group in a public

forum and talk problems out. The second group was the Technical Group, which is staff on both sides to sit as a technical group to work through the technical problem side of things. If they couldn't agree on something, they would bring it to the Standing Committee.

NELSON: The groups met separately?

SCHLOTMAN: Yes, different times. The more technical or "how to" issues most likety came through the Technical Group to the Standing Committee. The Department and County might want to have something done or have a problem, so the Technical Group would meet and talk about it, staff to staff, and try to work something out and make the presentation or present the problem to the Standing Committee.

But, early on, the Standing Committee was much more a forum to talk on settlement and other things. From this a negotiating group spun off which met to negotiate something. What evolved from this was an interim settlement agreement with Inyo County which was reached in late '83, early '84.

The interim agreement provided a number of things. It provided a scheme for essentially joint groundwater management with a failsafe position for the Department. There was a table in there, I recall, that if we couldn't reach agreement, we could pump according to the table, depending on water year, runoff, and that kind of stuff. I don't know that we ever exercised that provision, but, that was the safety mechanism. The Interim Agreement provided for a number of years of studies, and an attempt to amass enough information to develop a jointly agreed upon long term groundwater management plan.

The Interim Agreement was presented to the Court of Appeal in April 1984, because we had to have them modify their interim pumping orders

to accommodate this new process. We also presented it to the Superior Court in the case I was handling on challanging their ordinance because there were two live pieces of litigation here. We asked the Judge to to delay entry of judgement on the Motion for Summary Judgement. Because if we had judgement we would have to take appeal, so at this point, we said no let's hold it even. Judge Turner was quite agreeable to doing that.

We presented the Interim Agreement to the Court of Appeal. I think there was a hearing on it in June. In one or two written orders which were not published, the Court basically said it didn't want to be concerned with the small collateral, side stuff with, our relations with Inyo County. I'm really being snide here, but I'm giving you the tone of what they were talking about. They said all they were concerned with was the interim pumping. But they would give us time to do those things, but the zinger, of course, and this was by December 1984, we had to accept a modification of the stipulation that we had entered into with Inyo County, that basically allowed the county to unilateraly declare us in breach of the Interim Agreement.

The Court did not trust us and probably had a certain animus towards us. It was very clear in that order. That was uncalled for. We had reached agreement with Inyo County. In any event, we agreed to it. We didn't have much choice at that point in time.

This started a process that lasted over the next five or six years of trying to reach agreement with Inyo doing these studies. The theory behind this was that "a little education will go a long ways." They will learn that what we have been saying was right. We can pump and it will not do any damage or harm, and we'll be able to reach some type of agreement.

The essence of that prevailed. The County did learn a lot, but so did the Department. We learned that there more of a relationship between the plants and pumping than we thought was there. We also learned that the plants were more hardy than the County thought they were.

By about 1987 or '88, we had reached agreement on a long-term agreement, or at least the principles and outlines of what it would be. That led to a decision to prepare an EIR. At this point I was less involved. This was much more staff and management working out the details at the meetings. I would attend as needed to answer questions, provide advice, whatever, as the case might be.

I think the agreement was presented to our Board and the City Council. It would almost have to be presented to our Board, at least, probably the City Council in '87 or '88, to go forward with the agreement. Going forward meant preparing an EIR. This would be the third EIR now on increased groundwater pumping, but really on this long-term management plan. In their last opinion the Court had more or less invited this, or at least, authorized this combined process.

So the Department and Inyo County entered into a joint process to write an EIR, by committee. It suffered as a result of that process. I attended some of the negotiating meetings and they really were negotiating meetings on the contents of an EIR. We had brought in an outside consultant, a San Francisco firm, to write it and to do some of the technical work. Some of the work was good. However, I would have liked to have seen more quantification in the work.

There was a long round of meetings. A lot more than I attended. This altimately resulted in an EIR that was presented to the parties for adoption in October 1991.

We had gotten several extensions from the Court to allow us to do this.

I remember we had some last minute discussions with the County. They were "wiggling" on something, I forget if it was on the long-term agreement or the resolution approving it. They wanted a less than complete approval on their side. They just didn't want to say it was an adequate EIR, I think.

I remember we had a discussion on it, and I think it may have been Commissioner Jack Leeney, who gave them an ultimatum. Fortunately, they blinked. It had to do with support for the EIR in court.

Anyway, it was approved by our Board, our City Council and Inyo County and we filed a Return to the Court of Appeal. The document says that we have complied with their writ ordering us to do an EIR. "Here's the EIR, here's the long-term agreement." Inyo County filed a separate document supporting that, which is what the fuss had been about.

The Court of Appeal promptly invited outsiders in to review this, because we were no longer adversarial with Inyo County. The Court was shocked and appalled that the original parties were happy and they wouldn't let it go.

The Sierra Club and the Owens Valley Committee had been amici curiae to the Court. The Owens Valley Committee and the Sierra Club were almost one and the same. So, they were invited to express their views to the Court on the agreement and EIR. The State of California also intervened as amicus on behalf of Fish and Game primarily, and a little bit for the State Lands Commission. The Owens Valley Indian Water Commission intervened amicus, and one Stan Matlock tried to intervene amicus. But, he was always a day late and a dollar short.

NELSON: What was Matlock's interest?

SCHLOTMAN: Long time Valley resident in the Bishop Cone area. He owns land there. He doesn't like the Department's operations there. He kind of marches to his own drummer. As a matter of fact he has filed his own action, now, challenging our pumping operations under the Hillside decree on the cone which my associate Art Walsh is handling.

NELSON: What is the "Hillside Decree?" and what is the "Bishop Cone?"

SCHLOTMAN: The Hillside Decree comes out of the case entitled, I believe, Hillside Water Co. vs. Department of Water and Power, found in 10Cal2d. It was a case begun in the early 1930s by residents living in and around Bishop, California, who complained that the Department's groundwater pumping and other water gathering activities deprived them of a beneficial use of water, i.e., the high water table underlying their property which was beneficial to their ornamental and agricultural crops.

The Department prevailed in the Supreme Court which determined that while such a relation might be a beneficial use of water, it was not reasonable and if not reasonable could not be held lawful because of Article X, Section 2, of the California Constitution. Subsequent to the victory in the Supreme Court, the Department entered into a settlement agreement with the other side, because, I believe, of language in the Supreme Court opinion that indicated the Department would have to engage in what was then called reverse condemnation in order to acquire rights to the water.

Having won, the Department essentially gave up the bulk of this victory by agreeing not to pump water from the area known as the Bishop Cone for export out of the area of the Cone.

The Bishop Cone is a geographic area generally surrounding Bishop,

which for want of a better term, can be described as a sub aquifer or sub basin. It is generally characterized by a much higher water table than the surrounding area.

Going back to our joint EIR, the Court invited all those amici in. This essentially started a new round of negotiations for more tribute to the outsiders. The long-term agreement provided pumping and surface water managment regulations practically. It provided a technical manual, a "green book," that provided the technical details of how it would all be regulated. It tied in the pumping to its effect upon vegatation. This was the trigger to turn wells on or off. This has become a much more sensitive trigger than, I think, anyone imagined at the time. The agreement also provided for some mitigation measures.

The principal mitigation measure is the Lower Owens River Project. This is a project to increase the flow of water, and provide a warm-water fishery in the Lower Owens River below the original intake to just above Owens Lake.

Fish and Game wanted a high water flow because I think their agenda is to get water away from the Department without regard for the environment. This was counter-productive to what both parties, L.A. and Inyo, wanted to do. I remember Brent Wallace, who was Inyo County CAO at the time, expressing the view that there was already a pretty good warm water fishery in there and we didn't need to be "screwing" around with it. But, that's where Fish and Game was coming from.

I'm not sure why State Lands Commission was involved, other than the water could possibly go out onto Owens Dry Lake. They were not active. The Indians felt that they had been left out of the negotiating process between Inyo and L.A. and wanted their fair share.

The Sierra Club and the Owens Valley Committee had essentially discreet environmental issues they wanted to discuss that they didn't think had been addressed. In other words, not enough analysis, not enough mitigation, and other things. There was a yellow-billed bird that some guy went on and on about at one meeting. We finally said we would address it. It was kind of at that level.

It seemed like we had reached agreement with the Sierra Club and the Owens Valley Committee relatively early on. We could not reach agreement with Fish and Game. We did a deal with the Indians early on to get them out and they were the only one's to get out during the process. We agreed to do some analysis of vegetation on their reservation and to talk with them; to sit down with them separately in a forum and talk with them. They agreed to that and backed out of this amicus status. We did engage in the separate forum with them. A primary issue that came out of that was what water rights they had, if any, as a result of the 1940 land exchange agreement, that were reserved to the United Stated on behalf of the Indians. There was a mutual reservation of water rights, primarily because the City reserves water rights, in that agreement and deed. We, and the folks representing the Indians spent a long time trying to figure out what, if anything, they had reserved since they didn't own the land anymore. We'd exchanged it and taken reserved water rights. We determined that if they had reserved anything it was some kind of right to appropriate groundwater from beneath that property, but they had no right of surface access. They thought they had rights. We said, "Fine, if you want to put a well down that deep for a million dollars, go ahead." We went around and around on this over a several year process before reaching tentitive agreement at the staff and management level with the Indians last year (1997). The agreement

provides an amount of water, up to about 4,500 a/f annually, they can pump from one of the parcels in the Bishop Cone that's been put into draft form and presented to both sides for review. That is a long process. The Indian's internal agreement process is, I think, mysterious. They're still considering the agreement, although all the negotiators seemed happy with it at the last meeting, six to eight months ago.

We negotiated with Fish and Game and the other parties for the next couple of years, on and off. We kept the Court advised and received time extensions for additional work that would get them off our back. This dealt with how we would address the Lower Owens River Project, which would have its own separate EIR, and always would, as noted in the original agreement. We did additional environmental work in the Owens Valley in terms of examination or mitigation. We used aerial studies to determine if there was vegetation loss.

But, we could never quite close the circle, particulary with Fish and Game, the principal party we were negotiating with. They just did not seem to want to be reasonable. Towards the end, we had kind of narrowed down to Jim Wickser and me, and Jim probably as much as anybody. Fish and Game brought in a new Deputy Director. He was from the Owens Valley. I think that if he had been involved earlier in the game we would have reached agreement. He was reasonable and wanted to talk to us. It all boiled down to the cutting edge issue, which was the amount of water flow in the Lower Owens River and where we would put the water into the river. There was a ten to twelve mile piece of the river which was likened to a "black hole," because of the condition of the ground which concerned us, So we wanted some reservations about that because if it became a "black hole" we would be dumping ever increasing amounts of

water into it. Fish and Game would not agree. But I think that if he had been in the process earlier, we might have reached agreement with them.

Negotiations broke off since we couldn't reach agreement with Fish and Game. I forget now whether we advised the Court, or we had stopped advising the Court that we needed more time since we were so close, or thought we were close. At some point the Court got tired of waiting for us, and with some justification, set a briefing schedule.

To put this in perspective, the Court finally discharged the writ in 1997. We had submitted the Return in 1991. So, that was a six year process of what should have been a simple thirty-day issue. So the Court set up a briefing schedule. There had been various documents filed with the Court by the amici pointing out their problems with the EIR and so on. The Court considered them for about a year and then issued an order which essentially said, "We'll tell the parties, meaning L.A., what, if any issues we want to have a brief on after we've seen the briefs from the other side."

The other side submitted five or six briefs challenging or outlining what they thought was wrong with our EIR. This mostly concerned the dotting of I's, and crossing of T's, or that we had not done enough analysis, enough this, enough that.

A year later the Court basically took the table of contents from the Sierra Club's brief and said, in effect, "That's what you should respond to." I'm serious. They went right down the list. There were eight issues, if I recall correctly.

So, we responded to their brief. I'm not sure there were negotiations going on during this period of time. So everybody just sat and waited to see what the Court would do. Somewhere in this period of time Jim

Wickser decided to take another shot at negotiating. I was not involved in those negotiations. They probably figured I would be too irascible, or something. Jim got together with Fish and Game, and representatives from the Owens Valley Committee, like Carla Scheidlinger, and the McCormick firm, who was providing counsel to them. Larry Silver, who represented the Sierra Club would also show up.

Out of those negotiating sessions came another Memorandum of Understanding (MOU), which didn't look all that dissimilar to the first one. Part of the difference, perhaps, at this point in time was that we had involved Bill Plotfs and Mark Hill, who were fisheries biologists and creek restoration experts out of Idaho. Fish and Game listened to them. So, their ideas on how to restore the Lower Owens River became the path to follow.

We had done some studies which, because of the passage of time , provided us with real information. So, people weren't guessing anymore as to what might or might not happen in the stream. This provided a certain comfort level all the way along. However, I still think Fish and Game has an agenda that more water is better. They still want high flushing flows.

These negotiations went down a fair piece and a draft document was produced that I was asked to review. This was really my first involvment in the second round of negotiations.

NELSON: It had been done without Department legal involvement?

SCHLOTMAN: Yes.

NELSON: But there was legal involvement on the other side?

SCHLOTMAN: Yes, but the Department is famous for doing that. I wrote

a memo in response expressing my concerns about the MOU as it then existed. I provided my memo to Jim for his consideration. This led to some additional negotiations where I was involved. There was some rewriting of the MOU language. Jim had apparantly told the negotiators that once he had a draft it would be subject to a complete review within the Department, it wasn't a buyoff, Although, I think the other side's perspective might have been different, dispite what he may have told them, because they were less than thrilled with the rewriting process.

In any event, we went through some negotiations. Fish and Game brought in their own general counsel, Craig Manson, who now, I think, has been appointed to the muni bench in Sacramento. I had never dealt with Craig before, but he was a reasonable individual, contrary to others at Fish and Game. Some were reasonable, but it was, and is, an agency which is out of control. One part doesn't listen to the other. They all have their own agendas and do their own thing. I remember sitting in a meeting in Long Beach with Fred "Worthless" Worthley, and I use that advisely, because that is what people called him. Fred's a nice guy. He works for the Colorado River Board now. But, Fred could not, or would not, exert any supervisory or managment control over his own troops.

I remember the meeting in his Long Beach office. I forget now what the issue was, it could have been the Upper Owens River Gorge business, which is a whole other story. People from his own staff would argue with him in front of us. I think it was Gary Smith from Sacramento, in particular. They would have their own agendas on things. Let me give you an example, which is not related to this, but will show you how the agency is.

We experienced the Northridge Earthquake in January 1994. There was damage to the Sylmar Converter Station. Two large transformers with

ten to twelve thousand gallons of mineral oil in them. They had a volume of about fifteen by fifteen by ten feet. These were big pieces of equipment. Well, the earthquake knocked the socks off the transformers and they leaked mineral oil into catch basins. There were other things that were damaged that caused spills. Guess who was there within hours, gun in hand, to do a criminal investigation, none other than Fish and Game Wardens! They wanted criminal charges filed because of what the earthquake did. That's the attitude of that agency.

Was it related directly with the Fish and Game we deal with in the Valley? No. Indirectly? Maybe, but who knows how they talk. But, that's the kind of attitude you get from that agency. They run amuck and they have that reputation throughout the state.

It was difficult to deal with them. A lady lawyer from the Attorney General's Office, Mary Schoonuver, I don't know whether she represented Fish and Game, but she seemed to speak for them more often than not. She seemed to have an axe to grind with us. It seemed to me that she had much more of an environmental perspective, rather than a lawyer's perspective on the issues. I got the impression, and I don't like to personalize these things, that she did not like me. I don't know why. You can express strong views with people and still sit down and have a beer with them afterwards. We were always civil, but I always got that impression.

I remember going with Tony Rossmann to one of his classes and doing a guest lecture bit. He invited me up and I figured what the heck and went. Tony was one who could inspire strong emotional feelings from time to time.

It was just an impression I have. You can talk to others about it. Mary is still around. She is still a player and we still deal with

her. But, you could talk to her and we did. But, some of the personality things certainly influenced some of the stuff.

Going back to the MOU, after not too many more meetings and a several month review in house, we proposed some changes. Jim and I went up to Sacramento for maybe not more than three negotiating meetings. Amazingly, we reached agreement on this second go-around.

It was Jim's baby. He put it together, good, bad or indifferent. We presented the second MOU to the Court with a request by all parties to discharge the writ. That kind of left the Court hanging. Justice Coleman Blease, in my view, clearly did not want to let the case go. Even though it was a three judge panel, it was his case. He had written the opinion back in 1979 or '80 that changed the ground rules and he had it ever since. We had some correspondence and we thought we going to go argue it. But, about the middle of last year, we received a two-line Order from the Court discharging the writ. It came out of the blue, anti-climatic, no explanation. And that was it.

So, after twenty-five years, the case was over.

We are now in the process of doing the work we had agreed to do which will lead to a new EIR on the Lower Owens River Project. There are studies going on and additional environmental work underway in the Valley. I'm not really involved in any of that stuff because it's more routine. I have moved on to the Owens Lake problem, plus the Owens River problem at various phases, as well as giving advise on the routine stuff.

NELSON: Going back a bit, did you have much interaction with John K. Smith, Inyo County Administrator?

SCHLOTMAN: Oh, one time I accused him of running the county in a

meeting, dispite the Board of Supervisors. He took some offense to that, but other than that, no, I didn't have much to do with John K. I remember he got real red in the face, I was young and dumb at the time and had been told that and it was probably true and I said, "Well, you really run the County up here don't you John? " He said something like, "Oh, no, I just give advice to the Board of Supervivors." That was it.

NELSON: Rossmann, he's an L.A. lawyer?

SCHLOTMAN: He's moved to San Francisco now. That's where his practice is. He is Special Counsel to Inyo County. Increasingly over the years Tony has had less and less to do as Inyo asserted itself and built up its own staff. Greg James is a good lawyer. Paul Bruce, the County Counsel, is a good lawyer. They just needed less of Tony's services. But, he was involved, and I am sure they had private conversations with him from time to time to review various issues. He did do some presentations to the Court because the Court probably listened to him more than it listened to the Inyo people.

NELSON: Was Rossmann's specialty water issues?

SCHLOTMAN: I would call Tony an environmental lawyer who thinks he's a water lawyer. He would probably take some offense to that. He has taught water law at UCLA. I don't think he is doing so at the present.

NELSON: Was he an anti-LA person?

SCHLOTMAN: Oh, yeah. I've heard him trot out something like, "I was born here and lived here and I'm ashamed of what Los Angeles has done."

He's mellowed some over the years.

There was a celebration, including BBQ, last year in Inyo County. Mayor Riordan attended as did Councilwoman Galanter, and a number of other people. In part this was to meet the new Inyo County Supervisors. It was the, "Finally, we got this agreement finished" party. The Supervisors took that occasion to publicly thank Tony for his work on behalf of the county.

NELSON: Who were the Department major players you worked with on the Inyo issues?

SCHLOTMAN: Duane Georgeson early on, but Duane left some years ago as you know. Jim Wickser was the principal player through all of this. Duane Buchholz, when he was up in Bishop. Russ Rawson was involved, particularly in drafting, and working on the meetings for the EIR. The people in Bishop did a lot of that work. Bruce Kuebler worked on the first EIR, but then went out to Water Quality so I never much worked with him on the Inyo stuff. Dennis Williams was very involved. He ran the Aqueduct Division during an eventful period of time. These were the people I remember, without real serious reflection, who were more or less manning the trenches for the Department.

NELSON: You mentioned earlier that you felt the Court thought we were playing "cute" with our first EIR. Can you elaberate a little more? I know we hit this earlier.

SCHLOTMAN: Yeah, and if you would read the Opinion, you would probably come to that impression yourself. No project definition, No no-project definition. Things like that. I think we've covered this before. But, it was probably an attempt to too narrowly define the water involved.

"We can't give anything away, so we're going to define as little as possible that's on the table," The Court looked at it and said it wouldn't work. Technically, it may have been valid, but it didn't work in terms of the Court.

NELSON: How about yourself. Did you get good support from the City Attorney's Office?

SCHLOTMAN: We're semi-separate over here. Right now we have about thirty lawyers over here, somewhat less during the height of the Inyo goings on. We're self-sustaining. The Department provides us with very good support. It's a pleasure to practice law here because we get to practice quality law on quality issues. That may be changing a bit in the current era with the downsizing. There is less staff support now than we previously had. Less competent staff support now, quite frankly, and that's a problem that may not go away.

The Owens Lake is a hot issue right now because of the dust. I just filed a major brief with the California Air Resources Board (CARB), Monday some hundred and ten or twelve pages.

On the Owens Lake issue, the Department has provided almost zero support, frankly, so far. The politicians have taken it almost completely away from the Department. We've become politicized in the last half-dozen years, partly due to Charter changes and partly due to attitudes. The Department will get its head handed to it if it doesn't get its act together and do something, which it is not doing at the moment.

NELSON: Who are you talking about? City Council? Department management?

SCHLOTMAN: Yeah, City Council, Management, It's all becoming political.

Owens Lake is a political problam and it will be solved politically. I recognize that, but the current Proposed Order from the Great Basin Unified Air Pollution Control District (Great Basin), which we are currently litigating before the ARB, has been costed out by Parsons Engineering at three hundred and twelve million dollars in capital expenses. If I hadn't gone out and hired outside experts the Department would have zero people to object to Great Basin's plan. Zero.

NELSON: What you are saying doesn't faze the people down the street?

SCHLOTMAN: No. Ruth Galanter is a nice lady. She has not been anti, but I'm sure she doesn't want us to go in and cement over Owens Lake either. So, there's a line we have to walk. We have a new General Manager, David Freeman, who clearly has his own agenda on this.

NELSON: From the little I've read, Mr. Freeman's focus seems to be on the power side and preparing for deregulation.

SCHLOTMAN: That's his focus, but I think he perceives himself as an environmentist. I don't want to make it sound in a denigrating sense because I don't know him well enough to say whether he really is or not. But, some of the things he is doing would fit that viewpoint, which is neither here nor there. But, some of the things he wants to do on the Owens Lake, I think, are premature at this time. He needs better information and counsel on the Owens Lake than he's had to date. The problem with this individual is that he take his own counsel more than he takes anybody else's. He's very headstrong.

The Department and Great Basin got into a fight in 1983 on air quality. This was at a time when Great Basin was basically a two-person agency. Their agenda was that they were going to help Inyo County solve the

water export problem by putting their two cents into the fray.

When the Department's Power System went to Great Basin for an air quality permit for the Coso Geothermal Project, Great Basin told us that we were not in conpliance because our water operations was causing dust. Apparantly, their theory was that the pumping dried up the ground and created dust that blew around. That was, and is, nonsense of course.

Ken handled this and it went into litigation and we negotiated a political solution which resulted in the State Legislature adopting Section 42316 of the Health and Safety Code. This was not quite what we wanted, not quite what Inyo County wanted, but close, and it put that dispute to bed.

Section 42316 has some ambiguities in it. For example, it says that the Department will fund Great Basin's air quality analysis and reasonable costs to develop control measures. It didn't define "reasonable costs," or "control measures." The Department is obligated to undertake reasonable control measures, whatever they are.

Great Basin has now adopted what they consider to be reasonable control measures. We consider them to be extremely unreasonable. The quid pro quo for this in the statute is that Great Basin can not affect the Department's water activities. Of course, their control measures explicitly attempt to affect the Department's water activities.

So, we are taking the first step in the process provided in the statute by filing an appeal with CARB for an independent hearing. That hearing is set for May (1998). The brief we just filed regales the reader with expert opinion from our outside experts who have reviewed Great Basin's proposed control measures and think they are not worth the paper they are written on for any number of reasons as

expressed at length in their declarations.

One example, and I'll leave it alone. Boron is a leachlate from using water to leach the soil because this is heavily saline soil on the bottom of Owens Lake. One of the things Great Basin wants to try and do is grow vegetation out on the lake to hold the dust down. Well, boron is a leachlate and it comes out, and boron is toxic to vegetation in the quanities found. Apparantly Great Basin was almost not aware of this at all and didn't care about it. That's an example of a fundamental problem with what they proposed. We hired two groups of scientists who independently evaluated, and independently noted that problem. So, I'm pretty comfortable that they have a real problem.

Anyway, we filed and it will become a multi-year process. In May, win, lose or draw, somebody will probably go to the Superior Court, and from there to the Court of Appeal. We'll see what happens. Is it both legal and political?. You bet it is.

NELSON: Is the Owens Lake problem going to see you through your Department career?

SCHLOTMAN: Well, I don't know. I could have retired two years ago. I'm of that age and time, but I also have a seven year old daughter, plus two eighteen year old twins who are starting college in September. If I were really smart, I would probably retire, obtain a second job making decent money and double-dip a little bit. But, I like the people here and the work. It's interesting and intellectually stimulating so I don't have any present intentions of leaving, but one never knows.

NELSON: What about support from the Board of Water and Power

Commissioners over the years?

SCHLOTMAN: In our negotiations with Inyo County I remember Jack Leeney and Rick Caruso as being strong and dominant players, particularly Jack at first, then Rick. Yes, we had good and strong support from the Board.

On the last go-around, or the second MOU, I don't remember the Board as being a factor. It was Jim Wickser. After the first effort had fallen apart he decided to take another shot at it.

NELSON: As you look at it now, did Jim take a good shot?

SCHLOTMAN: Yeah. I think it was what was needed to be done. If you wanted to live with the deal with Inyo County, it was what had to be done. The price we're paying is not terrible, I think. It's not inappropriate. We essentially agreed to do all that stuff two or three years before, and Fish and Game would not agree. We didn't think they would, but Jim went back and took another rip at it. As I said earliier, I think it was the work of Bill Plotfs and Mark Hill that helped calm the ruffled waters and pull the thing together.

Essentially what Mary Schoonuver and Fish and Game wanted was control. They couldn't have control and that was the stumbling block.

Much of that dispute was about power. Jim was able to get around that, although, I had some problems with the agreement. Some of those problems were ameliorated during the last negotiations.

Through all that I don't remember our Board playing a key role. I'm sure Jim kept them appraised as it unfolded. I imagine they were just happy to sign off and get rid of the darn thing. Everybody was.

NELSON: Going back, was there any support at any time by City Hall or the Council?

SCHLOTMAN: Only at the very end points where they had to approve something. They thought it was a good idea and they signed on to it. They were not particularly involved. No one carried a flag or banner one way or the other.

In the last half dozen years the Department has changed as you know on a structural basis. The Department used to be independent. It is no longer independent. The mayor appoints the General Manager (GM) now. Our Board has nothing to do with it. The GM can be removed by the Council, our Board has nothing to do it that either. The Board can give the GM more or less work, but the Board is appointed by the Mayor as it has always been and the current Board appears much more cognizant of who appoints them. Frankly, they appear to be much more of a rubber stamp than previous boards.

The other major change is Proposition 5, which added Section 32.3 to the City Charter. This allows the City Council to assert jurisdiction over any action taken by the Board of Water and Power Commissioners, not otherwise specified in the Charter.

For example, if the Board approves a one year contract with Joe Smith and Associates, which in the "old" days would not normally go to Council, it now faces a formal waiting period, during which the Council can assert jurisdiction with as much power, if not more, than the Board has.

Do they do that often? No, but the effect or atmosphere is that everyone "kowtows" to the politicians. When the political office calls up, and it may be a routine call on a constituency inquiry, which is a

normal and legitimate thing for them to do, "Oh, the Council office called, they want so and so, we have to defer to them." It's changed the whole attitude.

Mayor Bradley issued a directive 39 which the Department chooses to follow, it doesn't have to. Directive 39 says that before the Board can approve anything that may go to the Council, it has to be looked at by the Mayor and CAO first. Completely extra-legal. It screws up the approval process. It screws up the project schedule. It's the political influence at all levels that has changed the Department, which is reflected in the mess the Department is in right now.

From my respective and in the areas I deal with, the Water System is seriously understaffed and may not have the resources to be able to handle significant problems that could arise in the future.

With retirement incentatives talked about in the near future, I know more key personnel will be leaving.

NELSON: You've had two bosses during your career at the Department, Ed Farrell and Tom Hokason. How do you rate them?

SCHLOTMAN: Different people. Ed was, and is, a municipal lawyer. He had been here a long time and understood the Department and city government and how things needed to be done.

For example, Ed practiced bond law. He was substantively involved in bond sales and the legal requirements for that process. I don't think we have anyone here today who could do that because we just haven't sold bonds for awhile. He was substantively involved in other legal problems, but probably less comfortable dealing with people.

Ed was a pleasure to work for because he left you to do your thing. But, you could go in and talk to him about a legal problem and you would

leave with some good legal advice. However, if you screwed up, you would hear about it. He did have something of a temper that arose from time to time.

Tom's background is as a liability lawyer. Serious liability issues which he handled for the city. He came over here as Ed's heir apparant, then went back to straighten out the liability section. So I think he may have some stronger organizational skills. I think he is more comfortable and graceful in meeting and dealing with people than Ed was. In any event he has had to do a lot more of that because of the changes we have had here. We just had an issue with General Manager Freeman on the brief that was filed on the Great Basin matter. Tom was the principal point of contact on the interface and probably kept us all talking to each other.

They both have their strong skills,. Tom does not know municipal law in that sense, althought he's learning. So you really can't compare the two.

NELSON: How is Legal Division, I'm sure that's not the proper name, structured?

SCHLOTMAN: The City Attorney's Office has the City Attorney who is paid persuant to the recommendation of a commission appointed by the Charter. This commission approves pay raises for all the elected officials. I don't know what Jim Hahn makes right now, but it has been approved by this salary-setting commission. So, he is kind of outside the loop.

Then there are two or three Chief Assistant City Attorneys, one of whom is Tom, another is Pete Echeverria, and the third was Tom Bonaventura, who just retired. Pete and Tom ran everything else in civil. They were nominally Tom's boss. All the civil departments report

to them and they split the work up between themselves because of the size of the office.

Then you have a couple of political types, exempt positions, which I think are now called Chief Deputy, which is a relatively new title, and they are both at City Hall. We are not civil service. We have tenure after a couple years. But, we're all political appointees.

After the Chief Assistants, which comprise two or three, there are Senior Assistant City Attorneys who will typically run a division. Then you have Assistant City Attorneys, then Deputy City Attorneys. There are pay grades within each of the classifications. Because of salary compression, the pay difference is relatively small within the classifications.

Seniors tend to be division heads, but not entirely. We have people who are supervisors and Deputies, and we have Assistants, who don't supervise anyone. In a law office, you should be able to make decent money without having to supervise, because of the nature of the work you're doing. The CAO, who has something to say about salary structure, doesn't quite understand that bold concept.

Here at Water and Power, Tom, a Chief Assistant, is in charge. Phil Shiner is his assistant, although, I don't think that has ever been confirmed, He was brought over to assist Ed when Tom went back across the street. Phil should be a Senior Assistant, frankly, and is not.

Tom organized the operation here into four sections. There is the General Counsel Section, which I head up. Contracts and Property Section, led by Dick Helgeson. There is Employee Relations Section, headed by Terry Rosales, and finally the Liability Section, led by Phil Shiner. Under that is the Commercial sub-Section which reports to Contracts, that's just a matter of convenience. You have the Bond and

Pension sub-Section that reports to one of them. Those sub-sections can be moved around. There's no magic as to where they can be attached. The computer folks report to me.

I'm still the Water System's lawyer, despite the title of General Counsel. We do water, environment, rates and regulations, and other stuff. Your practice remains the same, despite the title.

So that is how we divide up. You have Assistants in charge of these sections.

The lady who does Commercial is also an Assistant. She's receiving the pay because she's doing good work. The lady who does Pensions has gone down the street to run pensions for the entire City.

NELSON: Going back again, Ed. Inyo County Supervisors. Who impressed you?

SCHLOTMAN: Bob Campbell, probably as much as anyone, when he was on the board. He was a teacher and long-time valleyite. You could talk to him and go back and forth with him. He was a major player.

NELSON: And the most umreasonable?

SCHLOTMAN: That's probably an unanswerable question. They all are to a certain extent because they tend to not want to exercise political leadership or take courageous steps up there. Which may be true of all politicians. However, in all fairness, when they approved the agreement with us they were subject to recall, which they survived. But they knew it stepping in and they did the right thing anyway.

I think it is less political now for them. The Court has approved the agreement and dropped the lawsuit and we're in the implementation phase. People are beginning to see things done so that's helpful.

One of the things we gambled on with Inyo County in this process when we entered the Interim Agreement back in '83, approved finally by the Court in '84, was that when the County educated itself, developed a staff, had its own resources and capabilities, that we would be able to deal with them on a reasonable and rational basis.

We were comfortable in our position of what we thought we knew, although, I think the Department learned as much out of that as the County did. That gamble has paid off and the County has, by and large, been reasonable to deal with. You'll always get an attitude back and forth on both sides, and a little reaching, They always want a little more. But, that is perhaps part of the normal process tension. Now we do deal back and forth with them on a business basis.

We took that gamble with Great Basin. We said we would give them money to go out and do the research. We could have probably talked to them early on about us doing the research, and they could sit with us. They only had a two-person staff at that time. That gamble has not worked for whatever reason. They have spent a lot of time and our money and it doesn't seem to been very productive.

NELSON: I want to thank for your time and insights, Ed.

SCHLOTMAN: My pleasure.