

JACK CHURCHILL

TAPE 4, Side 1

March 27, 1996

M.O'R.: This is a continuation of the interview with Jack Churchill on March 27th.

So anyway, okay. So you're - you said there was lots of money - I forget where we left off exactly.

J.C.: Yeah. Well - oh, we worked with the Department of Forestry. Yeah. First of all, we set up a really good statewide advisory committee, and I worked ...

[interruption]

J.C.: When were you at Reed?

M.O'R.: I was at Reed in 62-63, 63-64.

J.C.: He was there then.

M.O'R.: Well, I don't remember him if I did run across him.

J.C.: So then we gave a grant to the Department of Agriculture to - or Forestry to develop mass management practices for forestry, and had George Brown of the Oregon State University faculty in Forestry. And they eventually kind of - they kind of got into secret sessions and developed these practices, and it was kind of a disaster. And that kind of started the worst things off in Oregon. That was a big mistake, too.

And then we got ...

M.O'R.: Secret sessions? You mean ...

J.C.: Well, in their development of these so-called technical issues.

M.O'R.: That probably made people a little nervous about what was going on?

J.C.: Oh, yeah. Me particularly.

So anyhow, the main thing was we did this state assessment, and this got everybody in the state involved and all the technical people, and we went around and we marked up every little section of every stream, whether it met - if it didn't meet the use requirements, fishable and swimmable and other things or whatever, what was the cause of the fact that it didn't meet the uses? And then we didn't go to a lot of numbers necessarily, we didn't have a lot of actual quantitative data, but we had a lot of qualitative data of people knew whether they had fish in the stream, what had happened to it, why - you know, whether the water had been diverted or whether farmers had fucked it up, screwed it up, or whether the foresters had cut the trees.

We found that the farmers hated the foresters because they - when the water started coming clean - stopped coming clean out of the forest it affected the farmers' use of the water. So you know, we found out a lot. And these maps were never used very much, but I think they'll be coming back pretty quick. But strangely enough, it was an excellent assessment of the non-point sources of the state.

And so I worked there and got the program going for a couple years, and then I went up to Portland State University.

M.O'R.: By this time you'd given up the idea of going back to Washington, or was it still in the back of your mind?

J.C.: Well, actually I guess - when did Carter come in? In '76. You know, it didn't - it wasn't very appealing. You know,

the Carter Administration and the EPA, the guy he appointed was just kind of an old - was not a very adventuresome person. And so it didn't - and I thought Interior for a while, but remember Cecil Andress was Secretary of the Interior, and he quickly kind of mellowed out into doing very little or compromising pretty heavily, and particularly in the areas of - you know, that I might be interested in so -.

I really didn't - you know, I started to, you know, look for a job and so on, and I decided I'd just as soon go to the University. The two things was there wasn't a really strong challenge that I could see in any areas in the environment, and secondly, I'm not - you know, I really didn't want to go back to Washington to live. And that probably was overwhelming.

And you know, and I always wanted to teach, so I got a chance to be an adjunct professor at Portland State, and I went up there on an intergovernmental personnel grant at first, and then on a salary with the University. And I taught in three departments, in Public Administration, System Science and Geography, but based in Public Administration.

M.O'R.: Now, the comment you just made about the Carter Administration and the EPA appointee and so forth, you're - I think we talked about this a little bit over lunch off the tape, too, but so from your point of view the Carter Administration wasn't really doing as much as the Nixon Administration had in terms of ...

J.C.: Oh, definitely. Oh, no, no. I don't think there's any doubt. I don't think anybody would argue that. Remember, Carter quickly got into the energy crisis, and the war on energy, and that was his -. See, and I don't think that's just being critical.

As far as - you know, when issues come into the public sector and they're either dealt with or they're not - you know, it's like the health issue. And they fester if they're not dealt with. Once they're dealt with legislatively, then the implementation level is very high, and then it kind of goes in a downward trend as the years - on almost all programs. You know, the people that started it wear out, get bought out or whatever, and so - but it's still not in the public eye. You know, it's not - although there's a strong interest in it, and this was true of the environment. The issue I don't think ever deteriorated as a very strong support among the public, particularly in the middle class, or whatever - it used to be the middle class.

But until - but there was no reason for it to be an issue to be dealt with in the political decision-making process. It had already been decided upon. So it was in the implementation. Now, in the implementation we started running into problems. You know, you can either - you can't raise a lot of concern or the White House will get after you because there's no political mileage in being a very strong enforcer, because you're causing problems all the time, you know. I mean, you - people are complaining. So the tendency is to kind of slack off a little bit.

And since there wasn't the combination of Russell Trane as Chairman of the Environmental Quality Commission, who was a very strong figure and close to the president, and Bill Ruckelshaus, who had the extraordinary ability, and particularly with a sense of humor, to move people and things and Congress and get accepted. These people were strong leaders in an era where the President was still looking for the political return.

Now, what you're seeing today is a return of the environment, probably the best thing that ever happened to the environmental management programs in the United States was the Republican Congress in that it has now placed environment back on the public docket for political discussion at the presidential campaign level.

M.O'R.: Instead of just sort of being ...

J.C.: Well, look. I mean, it wasn't mentioned in the last campaign. It wasn't mentioned in the campaign before that.

M.O'R.: Right.

J.C.: It wasn't mentioned in the campaign before that.

M.O'R.: And now all of a sudden it's ...

J.C.: And now all of a sudden it's a big bloody issue. So you know, anyhow, enough of that.

M.O'R.: Okay. Well, and how did Portland State agree with you?

J.C.: Oh, it was fine. I developed a - you know, seminar programs in water policy and land management policy and energy policy. And I taught other courses as well in introductory and personnel and things, but you know, mostly it was just these things that I wanted to teach.

M.O'R.: Did you draw upon your experience in Washington fairly heavily for your curriculum, then?

J.C.: No, I tried not to develop horror stories. [laughs] No. I had a kind of a lot stored up, and I had some catching up to do in the field, you know. But basically I had this thrust that I wanted to do which was to integrate water quality and water quantity policy, and water management policy particularly and with water policy, and so these are the things that I wanted to explore

academically and move forward with. But I had a lot of catching up to do in the literature and putting things together.

When I was in Washington, I did a lot of lecturing around the university, so I developed a lot of university contacts in all the natural resource schools; like up at Johns Hopkins I did a - you know, hydrological management and so on and so - I had a lot of contacts and various pieces, and a lot of stuff was fulminating. You know, this was an opportunity to start putting it all together into courses.

And this is what I did, I integrated water quality and water quantity, you know, and non-point source issues and how they got in and this type of thing, so that -. And this I did in the seminars, and I did it through - largely through every semester we would have a seminar project, and we would publish these papers these students would do. And one of the things I did was that nobody edits your paper. It's going to be published as it is. And - unless it's so poor, then we won't publish it. It doesn't reflect on me. If it's just going to reflect on you, that's okay.

And so - but then - so one of the first ones we did was in the Tualatin area.

Oh, by the way, when I came back to Portland, I located on Lake Oswego. And the last time I'd probably seen Lake Oswego was when it was a small village, you know, in 1940 or something, going out to visit some girls that had a boat on the lake or something. There were still large public swimming areas where the Bay Rock Apartments are and so on.

And that got me back into the so-called Tualatin Basin. And then I bought a house - I lived on the south side, and then I lived

on the north side - or the south side of the lake - the north side of the lake. And that got me again into the water quality issues rather directly in the Tualatin.

But at the University I started - we started a - the first seminar I had was in the Tualatin Basin, and I also started a program fairly quickly - this is - I went there in '76, and - maybe it wasn't right off, but ...

M.O'R.: Well, you went to DEQ in '76?

J.C.: Oh, yeah. So I went in '78. So that by '82 - and it wasn't until about '82, I think, I started these ...

M.O'R.: The seminars?

J.C.: The seminar focuses - reports and things that we published. Yeah, I think it took me a while to get that going. I think it might not have been published until '84. Probably '83 we did it.

And at about the same time Peter Quinlan of Oregon State University and I initiated what we called the inter-university water policy seminar. And we'd meet every once in a while, two or three a month, and we would have a big - and this would be everybody in the field. It was totally interdisciplinary. You know, you'd have people from the - the water guy from the Oregon Law School, you know, and the technical people from Oregon State, and even a person from Willamette and the geologists from Portland State, and then non-university people. Smith, you know, and people from BLM that were doing repairing areas over in Eastern Oregon, and a host of people.

We had a guy from the Forest Service - I forget his name now - who would be the facilitator. Excellent facilitator. So again, we

would develop these papers out of that inter-university water seminar in the field of water policy. At the same time I think the legislature had set up a thing that Portland State University had participated in in terms of developing some state water policy stuff. So there was a lot of stuff going on here.

But then to get right to the Tualatin, we decided we'd have a - some type of this inter-university water seminar, the first thing we did was to organize, Peter Quinlan and I, and we had a small - I don't know, eight or ten university types or students, and I don't know, some people around the basin. It was kind of half-assed organized, and we just had a little session on the future of the Tualatin. And Gray Kraemer gave us a room out in his Hillsboro sewage treatment plant, their meeting room, and I don't know, we spent one or two days. We had the head of the System Science Department come out and do kind of a futuristic discussion, and the role of the Tualatin and kind of the - not only in the Tualatin Basin, but how that interacted with the Willamette Basin, future of the Willamette Basin and the Columbia Basin. Those things futurists do.

And it was pretty good, and we did - and that was kind of our first thing we did on the Tualatin. And I think probably we put together the water quality problems that's related to growth, and this really started my focus on the Tualatin. I think I picked the Tualatin more because it was easy to look at. It was a big problem river, but there was no more particular reason to pick that at that time, I think.

M.O'R.: Just that it was close to home?

J.C.: Yeah, but it was - I know, in our assessment - of course, the Tualatin was the worst polluted river in Oregon.

M.O'R.: The worst?

J.C.: In 1976. There's no question it was the so-called highest priority to clean up if the depth of pollution -. One of the things we discovered and that seminar brought to light was that the history of the Tualatin was one of great - that it was a very bountiful river, and that it - being a west side river, you know, it originated in the coastal range and had pretty clean water, and then as it moved across the valley and had changes in temperature and nutrient changes and all of that, all this was very, very productive.

And Ripley said in one of his - what is it? - Ripley said that the Tualatin River had more diversity of fish types than any other river in the United States.

M.O'R.: Is it the Believe It or Not business?

J.C.: Believe It or Not. Had you heard that?

M.O'R.: No, I hadn't heard that.

J.C.: That's absolutely true. It's somewhere in my file. And we used that consequently several times in the years to come.

We also discovered that the Tualatin had - and this of course is why they have it - had probably - well, I don't know if it was the biggest one, but a very thriving crawfish industry in Tualatin, and they shipped crawfish all over the United States. Now, crawfish is a sign of a very healthy water environment. That's in down around - I mean, that's in what is the main stream of the Tualatin now. So you know, those two things kind of give you an indication.

And I think that column by Ripley was somewhere around in the mid-30's.

M.O'R.: I see. So we're talking ...

J.C.: Well, I'm just saying those are some historical perspectives that came out of that conference, because we were also looking at the past and the present and the future. We reflected on what was, you know - and we were looking at a big wide - you know, this was in the days of [indiscernible] and you're looking at these gigantic future sweeps, you know, and that's what we were really doing there. We weren't trying to solve the Tualatin problems per se; we were trying to put it into kind of a long-range and large - you know, a long-term framework, and how does it relate to the larger areas as an integral part - its head waters, its main steams and its flows and so forth.

M.O'R.: And you had some personal observations, too, of the water quality of the Tualatin just by virtue of living on the lake, right?

J.C.: Well, yeah. That evolved because I was having - I like to swim a lot, and I used to swim every morning, and then started to get into asking questions about, "Why are we having all these algae?" You know, every time it would rain in the spring, or whenever algae happens, it happened quite a bit. And I lived on what they called Duck Pond, and there was a little bit of a trickle of fresh water coming into our canal that was never terribly bad, but it was pretty bad to swim in, compared to what I'd been used to.

So I started to ask questions, and you know, that's when I ran into Jack Smith about that time, and I started to talk to the Lake Corporation, which has the responsibility for managing the lake,

and Don Burdick, particularly, you might want to speak to him. He's been around the Lake Corporation a long time [indiscernible].

And so I got to - and I got them interested in water quality, the Lake Corporation. And I asked them why they didn't take - you know, I tried to get them to take action against USA, which is really using - I mean, when you really describe this, Lake Oswego was just kind of a settling pond for the nutrients coming out of the Unified Sewage Agency's so-called modern, you know, treatment plants that were supposed to take care of all this sewage, because they weren't taking care of it. And we were getting the results of it.

Well, the Lake Corporation is a fairly - people that live in Lake Oswego are fairly wealthy, they're fairly Republican, they're fairly non - they're conformists, and they like to get along. And so they decided they'd rather deal directly with Mr. Kraemer, and I think he gave them some money for studies fairly quickly to find out what was wrong with the lake, and I think at that point I got them to hire Jack Smith, who I had run across earlier; he was a consultant to the Lake Corporation.

And I also - and so anyhow, Smith did some work for them, and - but every time I've talked to the Lake Corporation they'd kind of shrink when I came in the door, you know, because you know, I was just forthright, so that they're going to have - as the downstream entity, they're going to have to take action against the upstream polluters.

You know, and I never really could comprehend why people didn't understand this. You know, I knew that no polluter cared what happened downstream. What he cared about was what - how -

what his incoming water was like. I mean, that's natural. Why should you care what goes out the door? Economically it's not in your profit column.

M.O'R.: Right. Right.

J.C.: The cheaper you can get away with getting rid of it, the better off you are, from the standpoint of your profit sheet. And the same way with a public plant. I mean, the less you have to charge the taxpayers to take care of their domestic waste, the better - you know, the more of a hero you are because you can charge a lesser fee for the water and sewer.

M.O'R.: Yeah. So the economic incentives are ...

J.C.: Yes. Yeah, that's right. So anyhow, they didn't see this. They thought they could just -.

Then another thing I did was I went to the editor of the local *Lake Oswego Review*, and I laid it out for him, and I said, "You know, what you really need to do is to really get this as an issue and make it a campaign and come out as a really strong - you know, water quality, clean up - you know, Lake Oswego - the lake is the whole thing of Lake Oswego, and you're the *Lake Oswego Review*." I mean, they also owned papers up and down the river. So the publisher was not about to do it.

M.O'R.: They also had what up and down the river?

J.C.: Papers. They owned - it was a string of papers, so that I guess this particular publisher decided that these owners wouldn't like to see taxes go up, and you had towns up the river where they had ...

M.O'R.: Had sewage problems ...

J.C.: ... had also newspapers, you know. Yeah. So anyhow, whatever reason - he wasn't in a - what do you call it? - it was not going to be a newspaper crusader.

M.O'R.: But now, at least part of why you thought that that was a reasonable thing to do was because there had been some good articles written by ...

J.C.: No, not at that time.

M.O'R.: Not at that time?

J.C.: No. No, no. All the articles came afterwards.

M.O'R.: Oh, okay.

J.C.: No, but -. No, I just went in, and I talked to the reporter - I just talked to the editor and publisher and just said, you know, "This is what you ought to do," you know. And he said, "No, I'm not going to do that." And so you know -.

Smith then had been working with the Lake Corporation, and he told me, "Well, there's really nothing to do except, you know, go after USA and get them to clean up," and he wanted to make more of a study. Everybody doesn't want to take action. They always want to make studies. Doesn't make any difference who they are. So again I think Gary Krahmer gave them some money, and Smith recommended an enforcement action.

And so they had a lawyer, who's now representing - Gale Ackerman, Lake Corporation. And she never believed in total maximum daily loads or in citizen enforcement or anything like that, and she - although she's a very well-educated and strong water policy person in Michigan, she works for - what's the big law firm?

M.O'R.: In Portland, you mean?

J.C.: Yeah.

M.O'R.: Stoel Rives?

J.C.: She's a Stoel Rives lawyer. And you know, she was supposed to be its natural resource director, and she advised the corporation not to go with Smith's recommendation but in fact to hire somebody to do a great big enormous study of Lake Oswego. Whereas all the water comes out of the Tualatin River, you know, that didn't make any difference. And Gary Krahmer again put up some money for this and whatever.

M.O'R.: So this was the third time?

J.C.: No, the second time, I think. But anyhow ...

M.O'R.: Let me just backtrack a little bit, too, since Jack Smith is already starting to play in here, and I know that he's - that, you know, the two of you are involved in the rest of the story, tell me about how you first met him?

J.C.: Well, Jack, I don't know how I met him. He was with the Oregon Shore living down in Lincoln City, and I guess I'd been working with DEQ, and I guess I met him first then. He'd come in and talked and so on, and somehow we got, you know, involved in different types of issues, and we decided that we'd put - there was some money for lake studies out of the Clean Lakes Program, and so one of the - and there were some grants that DEQ was going to give out, so we put together a little proposal for cleaning up that lake down at Lincoln City. And then we got pretty well acquainted. And we pretty well balanced each other off, because I was more into the policy issues, and he of course had great scientific credentials. And I had, you know, a lot of knowledge of the Act and so on.

So as we went through this episode of cleaning up the Tualatin, we made a great team. And we'd change roles; sometimes he'd be the asshole and I'd be the conciliator, and mostly I was the asshole and he was the conciliator.

But anyhow, you know, we played that role, you know. Good cop /bad cop role, as well as everything else that we could think of.

But I've always had a great regard for Jack's inventive mind. I think really the biggest problem in most things in public policy, and most importantly in water quality, is defining what the problem is. And Smith has probably skill par excellence in terms of looking at the technical issues and getting rid of all the chaff and you know, just looking at whether - you know, very time - very short time period. I mean, he has a nose and you know very good skills, because he has both the great engineering and great biological and ecological background and understanding.

And so, you know - and I really understand the context of what decision-making is involved, both in the private and public sector. So together we kind of put together a good -. And we both know a lot about what each other does, too, but - and we trade roles a lot. [laughs] Which you do, you know, as things go on in partnerships you get bored with what you're doing so you do what you're partner's doing and he does what you're doing. I found that was true in the bureaucracy of the engineers - sit at the table and the biologists would talk about plumes and the engineer would talk about temperatures. With the Atomic Energy Commission.

Go ahead. Where shall we go here?

M.O'R.: Well, I don't want to necessarily jump too far ahead in the story, or I don't know where this fits chronologically, but

you did mention some things in the overview conversation we had about this about your own opinion of the local history of why USA was contributing so heavily to the pollution of the river.

J.C.: Oh, to the phosphate issue.

M.O'R.: Yeah, to the phosphate issue and also to, you know, some of the issues you mentioned in terms of management at USA, et cetera. So maybe - I don't know if this is the point to talk about that or not, but anyway ...

J.C.: Well, yeah, I think perhaps my perspective has kind of cumulated. I mean, not that it started or ended anywhere. But you know, you've probably got in your documentation, the Unified Sewage Agency is a product of a moratorium established by the Oregon Sanitary Authority in - 1970, was it?

M.O'R.: I think it was around 1970.

J.C.: Around 1970, which they said that you could have no more development. You had 20 - 18, 19 sewage treatment plants scattered through Washington County, some in Clackamas County but mostly Washington County, and none of them functioned and they were all polluting and they were all - a lot of them were package plants and, you know, very inefficient and so on. So you couldn't have any more growth until you came up with a sewage treatment plant for the area.

And so out of this was then - was born a County agency, which is the Unified Sewage Agency. And they hired a very good ...

[end of side one]

JACK CHURCHILL

TAPE 4, Side 2

March 27, 1996

M.O'R.: Okay. So they hired Thompson?

J.C.: That's my understanding.

M.O'R.: USA did?

J.C.: Yes.

M.O'R.: Okay.

J.C.: And it was a good consulting job, and they came up with the three regional plants plus rebuilding the - you know, the Hillsboro plant and a couple other plants. Getting down to five plants; is that right? Something like that.

And - well, one great mistake they made was that - probably, if you really think about it, was that they should have gone to the Columbia and gotten out of the Tualatin completely in terms of the Tualatin River just never has enough water to carry out the wastes of Washington County. Certainly not now, and certainly not in the future. So unless you go to complete treatment, which you will have to do, so that the treatment plants will in fact be the water cleaner for the - you know, clean up the water. You know, so if you - really looking at it from a cost-effective standpoint, the huge cost of going to the Willamette or the Columbia at that time were probably - that should have been the option considered, but it wasn't. I mean, it was looked at.

M.O'R.: Discharging the effluent to either ...

J.C.: Yeah. Not in the Tualatin Basin, but taking it away.

The second thing they did was they did call for phosphate removal, and the EPA approved the grants with phosphate removal in them, but there was a study by Portland State University - Glen Carter's wife was on that, and Carter was a big biologist with the DEQ for many, many years in water quality standards. She was a very competent biologist. And they found that the phosphate levels were sufficient above the treatment plants to cause this algae anyhow, so why worry about taking it out?

So, since phosphate removal was relatively expensive, they took it out. And DEQ allowed them to do that. And so this, of course, was the cause of problems in Lake Oswego, at least that was our perception of what caused it.

My own opinion of why they found those phosphate levels was simply that at that time - at the time they found those that it was agriculture, mostly dairy. Could be some growing - like whatever it was, the nutrient either there was a lot of irrigation started in there. I don't know how many return flows there really were, but certainly from my experience if you get enough agriculture in summer months, dairy or even the beginning of nurseries must have started it. Whatever the reasons, the phosphate thing was taken out, and then our whole suit later on was - and the river is water quality limited and over capacity in the way of phosphate.

So they said since there was some in the stream already they'd ignore any more. Well, that isn't quite what the Water Quality Act said. So they built all these regional plants but didn't take out the pollutant or didn't even provide for treatment of the pollutant that was the critical water quality impediment at that time.

M.O'R.: Now, if the federal money was going to pay for construction of these plants anyway, what was the motivation for trying to get by cheaper?

J.C.: I don't know. I do not know. You know, you could ask Bob Burd that. You can ask a lot of people. I don't know. I really don't know. I mean, the local participation was so small. I mean, it was two-thirds grants or something. I don't know.

The other thing that happened with the USA was in my judgment anyhow that it was a very poorly administered agency. Later in our depositions we found that there are two major sewage treatment plant operators, really, which is plain stupid, and really incompetent. This was in the depositions we did. And they were - shortly thereafter they - new people were brought in to run the plant. So what we built was good technology, but we never built a bureaucracy to run it in Washington County, in my judgment.

M.O'R.: Okay. Well, probably I did get you a little ahead or behind. Doing things in strict chronological order is sometimes a little bit difficult.

J.C.: Okay.

M.O'R.: Well, let's talk for a minute, then, about what - so we have Jack Smith advising the Lake Corporation ...

J.C.: Right.

M.O'R.: ... that they need to do something about USA's effluents. And we also have the attorney telling them ...

J.C.: Not to do it.

M.O'R.: ... not to do it, to instead do another study?

J.C.: Right.

M.O'R.: And so was it at that point that you and Jack Smith - well, let's see, Jack Smith in the meantime had - or right around this time had become the President of NEDC.

J.C.: Right.

M.O'R.: First non-lawyer, I think, to hold that post.

J.C.: Right. And we had started - we had actually, you know, filed this suit for the TMDL's, I guess in '86, was it? I think it was '86, for TMDL's, and I shortly came on the board - before that I guess we filed the suit.

M.O'R.: And this was the suit against the Environmental Protection Agency?

J.C.: Against the Environmental Protection Agency to make them develop a regulatory strategy so that when a river had reached its carrying capacity it would develop a loading - maximum loads for all the polluters that would come - so that the total load was being - comply with the necessary water quality standards which were set to serve the various uses, like fishable, swimmable uses or whatever, irrigation or farm use, or whatever the use was, you had criteria to meet, and if you couldn't meet them, then you had to somehow ration the pollution going in, whether it was a point or non-point source. That's what they call the total maximum daily load.

And in reality what the total maximum daily load is is a very important - is a critical bridge between the engineering basis and thrust of the Water Quality Act and the biological basis and thrust of the Water Quality Act. And engineering and biology are quite different. Engineering is a marginal science; biology is a - you know, a threshold science. It's the threshold of birth, threshold

of death; just kind of two thresholds. There's no marginality in it. You hit it, you're dead. You hit it, you don't reproduce.

Well, in most statutes the theory rests upon one scientific discipline. They don't try to mix them up like we did in Water Quality. Air Act is only one. So the total maximum daily load was a bridge between the two scientific disciplines. So when you run out of the engineering fix, like the best management practices and everything, the permit levels for secondary treatment, you then have to go - and you can't meet your water quality standards, which is the biological framework you're dealing with, then you set these loads to - you combine the two programs and you balance your loading to meet the carrying capacity of the stream, is essentially what that is.

And so the EPA never enforced that. There was one suit in Ohio, and we brought the second suit in the United States, and this is, what, 12 years after the Act, 14 years after the Act. And we brought it before Judge Burns. And it was kind of an interesting suit. After a few months, a couple of months, he called the attorneys, and he said, "Look, I see so much in the paper, you must be near settlement."

So then we went and we did one that - the thing to do was to really try - our - a suit for NEDC and for us was a policy-setting decision, to set a precedent, not just to solve a specific problem, although the Tualatin was the first one - the one that we wanted to solve with the TMDL and Bear Creek and the other critical areas. We thought we were making - we wanted to make national policy on this. This was Smith's objective, and this was my objective. We wanted to get EPA to goddamn carry out the Act. And this is why

people sue them, and that's why the EPA had 400 suits. And when the Administrator doesn't want to do it because of political pressure or lethargy, then the citizens and the active groups can go into court and get a federal order to do it. And so that's what our motivation was. It was larger than just the two issues or even the state. It was to go after EPA's jugular and make them do the - you know, to really get after them. Because it's so much easier to spend money or to plan rather than to make tough regulatory decisions. And TMDL's are tough regulatory decisions. So that was our objective.

Well, we won that suit. I mean, Judge Burns got the settlement - you know, got the parties to settle, and DEQ agreed to do two or three - a couple of - 20 percent, and they were supposed to start to work on the Tualatin, but they didn't do anything, really, They never got started, or what they did was, you know, not to our liking. And so we then decided ...

And we tried to get the Lake Corporation to file an enforcement action. But again, they wouldn't do that. So then we got NEDC to do it, and then we got very good legal counsel and just went after them. And oh, we sent the students down, and they turned up about 13,000 violations. And you know, and under the statute the penalty is about 10- to \$25,000 a day. And that kind of adds up.

M.O'R.: Now, this - we're talking now about the second suit?

J.C.: The second suit, yeah. Because the TMDL suit had not solved our problem on the Tualatin, or it did not look like it was going to make DEQ act, and EPA got out of it because DEQ had the programs. DEQ agreed to do these, so we settled the - we had no

recourse under the first suit. You know, once the settlement was reached, we had no leverage. So then the only other way was to file a suit directly against the polluter, which was the Unified Sewerage Agency, which we did. Washington County and the Unified Sewerage Agency.

M.O'R.: This is when you sent the students out to look at ...

J.C.: Well, you go down to the - every polluter has to - every discharger has to file a monthly report which includes the results of his daily monitoring. If they don't report accurate results and they falsify reports - and that's what a lot of companies got in trouble with - those are criminal violations. So no manager kind of wants to tell his employees to falsify - and none of the employees want to falsify it, because both would be subject to the criminal indictment.

So you know, that's kind of a protection. So in those reports which they file with the state agency, in this case the Department of Environmental Quality, are all of these violations. All you have to do is go count them out. And it's prima facie. You know, I mean there's no argument. They've admitted to doing these violations. So they're violators. Now, the question is, are they going to be enforced? Are you going to bring an enforcement action under the statute? Go to the enforcement section of the Act, and the enforcement agent is supposed to do this, and they're supposed to then make a negotiated settlement and, you know, fine them. You know, set a schedule for the cleanup and do it. That's what the Act said. They didn't do that. So then the recourse for a citizen is to bring suit in federal court to make them do that. And that's what we did.

M.O'R.: So you had the data in hand, and now, it was an incredible number of violations, as I recall?

J.C.: Yeah. There were 13,000. And you know, these are monthly - you know, monthly violations, these are daily violations, these are weekly - seven-day weekly violations.

M.O'R.: Over what time period; do you recall?

J.C.: It's over about a 10-year time period, I think. Something like that. Eight, 10 years. We didn't go back too far.

Now, these are in all five plants. I mean, out of five plants. But a tremendous number of violations.

M.O'R.: Although Gary Krahmer describes the bulk of them as being technical violations that weren't that serious, and I think Jack Smith even admitted that if you really wanted to look at the ones that were serious, it was a - it was still a sizable number, but significantly less than 13,000.

J.C.: Yeah, you can quibble technically, you know, that - what's serious, you know. And the Act does provide for mixing zones and all that, and to protect, you know -. In my mind, though, to say whether it's a serious or - you know, that's a judgment call. If you're going to run something on the basis of science, it either is or it isn't, you know. And so they reported 13,000 according to our count. According to their count, there were 8,000. Now, all right, you can give them three-quarters of what they gave you, and still it's a very serious invasion of the public water.

I mean, look, I mean, here's where I operate from and the way I operated in Lake Oswego. I swim in Lake Oswego. I'm a private citizen, right, and I have rights to this lake to swim in. It's

public water. It doesn't belong to the USA. Now, under the Riparian Doctrine of water, which came out of England, if you use water you should clean it up when you put it back. Okay, that isn't true of Western water law. But you use it, you leave it in the same condition. This is a long tradition of water use in the English - in Eastern American tradition, and that was the basis of the Water Quality Act.

And what we've have in [indiscernible] in economics is - and this started with Paget back in 19th Century England when he talked about social costs, and the costs that don't enter the market mechanism. Take the smokestack example, which he did: The steel company emits all the cinders, and it goes over on the lady's clothesline. Well, it doesn't get into the price of the steel. The lady pays for it, in terms of the dirt on her clothes, see, and that's what the social cost is.

Well, that's why you set up these things, so that the person who violates it is penalized for not paying to take care of the full cost of production of these items, if you're looking at the private sector. And the same thing's true about the public sector. Why should they be allowed to use the public waterways - you know, they belong to the people of Oregon - for a purpose that isn't authorized? I mean, beyond the extent of what their permit is.

So they weren't following their permit, no matter what it was. And if their permit wasn't being followed technically, they should change the technical limits in the permit. So whether it was minuscule or massive, you know, it doesn't make any difference. If it was minuscule and it didn't matter, then you say, "Go back and get the permit changed, procedurally." Or they're in violation.

You know, there's a little bit pregnant crap that's just a bunch of technical jargon to me. You cannot - it does not wash administratively, enforcement, okay? And they were creating a social cost, on my swimming.

M.O'R.: Right. And as it turned out, of course, it turned out they were able to achieve quite a bit more phosphate reduction than they were doing.

J.C.: Oh, sure. They could clean it all; of course they said they couldn't do it. Didn't make any difference. No polluter will clean up unless they're forced to, or it pays them to do it.

M.O'R.: Now, why was DEQ, state DEQ so complacent about this? Was it again the political problem, not wanting to make waves?

J.C.: Oh, I think there's too much buddy-buddy stuff. You know, I think since Harold Sawyer was Director of the department it was just pretty - you know, gone soft and didn't want to make waves. And you know, a lot of good old boy stuff among the old sanitary engineering profession, in my judgment. There was very little enforcement in DEQ. EPA was always trying to get them to do something, but there was never any inclination on DEQ's part to enforce.

And part of this is Gary's ability to seduce - you know, and to bullshit his way through it. You know, he's a great bullshitter. He was a terrible administrator, but he ran a great office. Everybody felt friendly. He's a very friendly-feeling guy, and he had friendly-feeling people. But he ran a disastrous plant. I mean, what he did was terrible. But his public relations were better than anything you can think about.

I mean, any guy that can be heading into a \$150 million lawsuit with the County and get the County Board of Supervisors to adopt a golden parachute for him, now, you've got to give the guy credit.

M.O'R.: Now, what do you mean by this?

J.C.: He got them to write into their budget that if he lost his job he would get a golden parachute out of it in retirement. Now, you know, please! In the public sector? This is unheard of, in any local government level.

M.O'R.: You mean if he lost his job as a result of the lawsuit ...

J.C.: Yeah, if he was fired over this - anything ...

M.O'R.: But the commissioners themselves would be the ones that would ...

J.C.: Of course. Figure it out. Well, I mean - you know, I mean, who is the best bullshit artist in the country? Gary Krahmer. He spent half his time on the golf course. Everybody knows that.

M.O'R.: Yeah, I've heard a reference or two.

J.C.: Well, what do you mean reference? It's true. Try to call between 11:00 and 5:00 in the afternoon. You never got him. I mean, it wasn't - you know, if you want to talk to him, go to the golf club.

Well, anyhow, we started out, and we did a - I think we ought to talk about the strategy a little bit. First of all, you know, having all this political experience, and having our experience with the TMDL suit, we knew it was a political battle, and it had to be a political campaign, and the decision was going to be poli-

tical. And part of the decision was going to be on the willingness of Washington County to settle, okay? So - and the willingness of Washington County to settle was to keep them from getting political allies in the state or national political system.

So one of the things I did was to go to Congressman Wyden and his aide and get them to ask for a General Accounting Office report on the administration of EPA, and DEQ subsequently, but the EPA water quality program in the Tualatin River. Since it was the subject of this enormous federal deluge of money to clean up this wonderful river, which had never been cleaned up, we thought it was time to measure the cost effectiveness of the EPA and their grant program in the Tualatin Basin.

The way we wrote the letter, and I helped them work through Wyden's office, was to get a really - a legitimate Congressional - you know, if you get a GAO report, nobody can dispute the facts. No court, no anybody. I mean, is rock bottom, solid stuff, you know. There's no dispute of a GAO report; the facts are golden. No matter who writes it, what it does, it's the basis of - you know. It legitimizes everything we say.

M.O'R.: Although I think it might be fair to say that the GAO does sort of sway a little bit with the political winds.

J.C.: Of course. Oh, no, I'm not - I'm just saying the reality of a GAO report is - though is an enormously important thing to have if it's on your side. That's the reality of it.

M.O'R.: Okay.

J.C.: Whether it's right or wrong has nothing to do with - you know ...

M.O'R.: The value of it?

J.C.: We just happened to have a good GAO person who really wrote a good report. We didn't have - we weren't able to influence it. What we were able to influence was the way the issues were raised in a letter from Congressman Wyden. And when he got the damn report, he didn't understand it or didn't use it correctly, and I tried to intervene in his press conference, and he told me to shut up and wait till afterwards. Hey. But he didn't - you know, he didn't use it and didn't use it properly. But at least it did the main thing, which was to keep all the political actors from intervening on the part of Washington County.

M.O'R.: Now, when you say he didn't use it properly, what did he ...

J.C.: Well, it was so damaging to EPA and Washington County, he could have used it as a political issue. It was in his district. And he didn't - I don't know whether he didn't understand it or he was making his own - you know - who knows what Wyden is doing? I don't. I mean, I never understood the man very clearly in terms of - well, I don't know. I just don't know.

The other thing we did was we went to Les AuCoin's office, Smith and I. We talked to the staff, and we talked to AuCoin, and you know, and explained what we were doing, very open about it, and what the issues were, and maybe they could help, you know, and they would get some special money from the Corps to help them. And you know, we tried to find ways - and we went to Bonnie Hayes, the Chairman of the Commission. You know, and we were very open about this so that - and we'd go around and we'd talk to these people, you know, and say, "Maybe we can get you some money," and this type of thing. But we were determined.

They didn't believe us, of course, but at least we went, and they couldn't fault us for that. And so that was good strategy.

M.O'R.: And what was the bottom line on the GAO report? What did it say?

J.C.: Oh, it said that the plant had not been operated effectively, and there are some end-of-the-line problems, et cetera. You can get a copy of it.

M.O'R.: Yeah, I will get a copy, just to add to the file.

J.C.: And the other thing we did was to - oh, I mean, how this game was played is interesting. I went to the City Council in Lake Oswego and talked about the USA, and since USA serves part of the City of Lake Oswego. And I told the City Council, I said, "You guys have got to get off your butt and really, you know, watch this. And you know, it's going to kill the city. I mean, you're going to lose - you're in danger of the lake going bad, and think what will happen to your bloody taxes."

So the City Manager, Pete Harvey, writes this letter explaining my - telling about all my actions, to Gary Krahmer, in very devastating terms. And here I am, a tax-paying citizen of Lake Oswego. I've already served on the Council. But no, I mean, actually we got to be good friends, and at the time - he had served too long, actually.

But that was just kind of an aside, though, but I mean, this game is not a clean game. Even your own city, which is, you know, suffering from this pollution - and it's similar to the Lake Corporation; oh, they were very happy to see me go out and do this, but they didn't - I mean, you know, if I even got close they'd kind

of move away. And did I smell bad, you know! I mean, they just didn't want any association.

Well, we kept doing public events for newspapers and TV, and you know, we'd get a lot of stories in the papers. Everything was, you know, press release after press release, and charge after charge. And at every hearing, why, you know, I'd get there and sign up first and wave my arms and get the TV stuff, and do everything that we possibly could.

One of those episodes was really wonderful. The USA by this time had hired a public relations firm. [laughs] And one of their public relations firm's ideas was to show that they really cared.

Oh, before I talk about this episode, one of the things my seminar did - in the meantime, my seminar revisited this and we wrote a bunch of papers and we did another book on the Tualatin. So we had two books on the Tualatin by then that looked at various aspects of it.

Well, one of the things they did was they did a telephone survey of people in the Tualatin Valley, if they knew - I don't know, whether they knew where the Tualatin was, or what did they think of it, you know. Well, we found out that 75 - 70 percent of the people that lived in the Tualatin Valley didn't even know where the river was. And then we thought about that quite a bit, and then I took a flight over the area and then I looked at some maps and so on, and I realized what the developers had done essentially like in the ghettos. You know, remember when they would let the people in the ghettos draw pictures of their impression of where they lived, and they had these walls around the ghettos, you know, in their minds? You know, back in the Johnson days? Well, I made

the supposition in my own mind that this is what the developers have done; they just totally ignored the river when all this development went on. And there was no public access, or very little public access.

And that's one of the problems is if people can't get to the river, they're not going to care about it. And that's what we found down at Bear Creek. When the people decided they wanted to sit and watch the river, they got interested in the quality of the stream. It's a little piddling stream compared to the Tualatin. But there were a small number of users, of fisher people. I mean, it's a good warm-water fishery still today. You know, people do fish it. And some people canoe it, have canoed it for years. But the use is very, very limited.

M.O'R.: There's almost no publicly-owned land on the banks.

J.C.: Exactly. So from that survey we then realized that ...

M.O'R.: Hold on for just one second.

[end of tape]