

ENVIRONMENTAL  
LAW

ORAL HISTORY SECTION

*From the Oral History of*  
**JOHN ZIEROLD**  
*Environmental Lobbyist in California's Capital,  
 1965–1984*

An interview conducted by Ann Lage in 1984 for the Regional Oral History Office, The Bancroft Library, UC Berkeley.<sup>1</sup>

LAGE: Let's turn our attention now to CEQA [California Environmental Quality Act] which passed in 1970.

ZIEROLD: Jack Knox was the author of the bill.

LAGE: I didn't find too much information about how that came about or what role the club might have had.

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<sup>1</sup> Presented here is a brief excerpt from John Zierold, "Environmental Lobbyist in California's Capital, 1965–1984," an oral history conducted in 1984 by Ann Lage, Sierra Club History Series, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1988. © 1988 by the Regents of the University of California and the Sierra Club. Underwritten by The National Endowment for the Humanities and the Sierra Club.

The oral history excerpts in this "Environmental Law — Oral History" section are intended to provide personal commentaries on the topics discussed in the preceding Environmental Law "Articles" and "Book" sections. This excerpt relates to the articles: Kathryn Mickle Werdegar, *The California Environmental Quality Act at 40*; and Darren F. Speece, *From Corporatism to Citizen Oversight: The Legal Fight Over the California Redwoods, 1969–1999*; both in this volume, 13 CAL. LEGAL HIST. 3 and 57 (2018).

ZIEROLD: The club had a very important role in that, as it has in almost any major environmental bill. What was the number? AB 2045. There was never any doubt in our mind that the California Environmental Quality Act paralleled the national Environmental Protection Act. The Assembly, under Bob Monagan's leadership, had set up a Select Committee on the Environment, which shows you how things have changed. Bob Monagan is a moderate to conservative Republican. Sort of halfway between those two arcs in the spectrum. Most Republicans prior to 1970 had been indifferent, not hostile necessarily, but more or less indifferent to environmental issues. And in 1970 there was an abrupt change.

George Milias, a liberal Republican from Gilroy, was chairman of the Assembly Natural Resources Committee, always had been a good vote on it, stayed that way, very much concerned over wildlife matters, good on land-use planning and on coastal issues. He was chairman of the select committee. This was, under Monagan's leadership, a plan to put some environmental regulations on the books in a way consistent with what the federal government had done. We were really the first state to do this. We even had an environmental bill of rights, carried by George Milias, which did not pass but came very close.

At any rate, the California Environmental Quality Act came out of the select committee, passed the policy committee — Jack Knox was author — sailed out of the Assembly and went through the Senate without too much difficulty. It was only after the State Supreme Court decision on *Mammoth* that troubles began with it.

LAGE: When it passed, did you see it as a major piece of legislation that would change?

ZIEROLD: Yes, unreservedly so.

LAGE: The Legislature apparently didn't look that closely at it.

ZIEROLD: No.

LAGE: Did you always feel CEQA applied to private projects?

ZIEROLD: No question about it. Then the *Friends of Mammoth* decision [September 1972].<sup>2</sup> That suit was brought originally by Andrea Mead

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<sup>2</sup> *Friends of Mammoth v. Board of Supervisors*, 8 Cal.3d 247 (1972).

Lawrence, a skier who had been on the U.S. Olympic team and lived in Mammoth. She objected to a housing development over there and brought suit under the Environmental Quality Act and won. The case went all the way to the Supreme Court. In the deliberations and in the decision, there is something called “footnote 8,” which spells out the requirements that there be feasible alternatives and mitigation measures studied and adopted by the permitting authority.

What happened then was that the financial institutions and the general contractors and the real estate people and anybody engaged commercially in putting two sticks of wood together descended on the Legislature in a panic. That resulted in another bill to clear up the situation. We had long and rancorous discussions. By that time Bob Moretti was speaker. About two years later.

LAGE: '72.

ZIEROLD: '72. But for the first two years things were moving along without too much difficulty.

LAGE: Well, not too much was done in those two years.

ZIEROLD: No, not too much was done. It wasn't until the *Mammoth* decision.

LAGE: The Reagan administration had begun to set up some guidelines, which I guess nobody liked very well.

ZIEROLD: The guidelines were put together by the secretary for resources, who was given responsibility to do that. Those guidelines would include categorical exemptions. A suit was brought on a couple of them. Categorical exemptions six and seven dealt with exempting pesticides. That was what the Reagan administration wanted at the insistence of the Department of Food and Agriculture, but that was challenged in the courts and struck down. So they were not exempted.

LAGE: So the *Friends of Mammoth* decision dealt with the fact that CEQA applied to private projects as well as public?

ZIEROLD: That's right.

LAGE: Now what about these questions of mitigation measures?

ZIEROLD: In the Supreme Court decision, finding for *Friends of Mammoth*, they prepared footnotes. And footnote 8 is the one that is key. It states that it is necessary to study feasible alternatives to any project and also that feasible mitigation measures be adopted.

LAGE: But this wasn't in the legislation?

ZIEROLD: Yes, it's in the legislation, obviously. The argument had been made in the Senate after this decision that the members of the Governmental Organization Committee thought it only applied to public works and not to private projects. I guess it's because they didn't read the bill very carefully.

LAGE: What about Evelle Younger? His environmental unit?

ZIEROLD: Well, at that time. Younger, of course, was attorney general. He had an environmental unit headed by Nick Yost and including Louise Renne, and Clem Chute, and I believe, Jan Stevens. Alexander Henson also served on it.

LAGE: Now, who are all these people?

ZIEROLD: They were brilliant young attorneys dedicated to environmental ideals. And they were very, very effective.

LAGE: And what about Younger himself?

ZIEROLD: Younger was committed to the California Environmental Quality Act. And he stood by that in the face of very severe criticism from commercial interests and poobahs in the Republican party. But he wouldn't back down.

LAGE: He obviously agreed with the way the environmentalists had read the act?

ZIEROLD: The CEQA enjoyed the protection of the Attorney General's Office. That made a difference with the Legislature too. First of all, the Legislature was under the leadership of Leo McCarthy in the Assembly and Mills in the Senate. In the latter part of 1970, it had been Howard Way, Jack Schrade, and then Jim Mills. In the Assembly it was Bob Moretti at first, and then Leo McCarthy.

With Moretti, there was a willingness to try to modify CEQA, to remove uncertainty on the part of lenders. That too, I suppose, looking back

at it, is not altogether unreasonable because if you haven't got investor confidence, there isn't financial backing for worthy projects that are beneficial to the economy. This was not a matter of the robber barons or the polluters wanting to be protected. Most investors were unsure of the time delays. And there could be substantial time delays, sometimes two years before a project could be approved. For investors to put money into a project and then have to wait two years, with no certainty as to whether or not the project was going to go forward, was more than they were willing to accept as risk. When they did their risk analysis on the investment and study of return on investment, and all the other decisions that investors have to make, they saw the picture being very clouded and wanted it cleared up.

They wanted a moratorium on CEQA until these questions could be answered or until such time as the bill could be rewritten to provide investor confidence.

LAGE: So this is the immediate response to the *Friends* decision, a moratorium.

ZIEROLD: A moratorium was wanted. What we did was to give up on a moratorium idea, protect existing lawsuits, and go through with some minor curative measures on AB 889 (Knox).

LAGE: AB 889 was not a moratorium, not a rollback of any kind?

ZIEROLD: Right.

LAGE: And then what attempts came after that to alter the CEQA?

ZIEROLD: They tried to exempt all private developments from that point on. Those efforts failed. There were also attempts to create some changes in the law on vested rights. That failed. We were at that point in time able to protect CEQA because the investors learned that they could live with it. The lending institutions realized that while it took more time because more things were considered by the permitting authority, nevertheless there was a degree of certainty that they thought had not existed, but which did.

LAGE: Did you want to comment on McCarthy's role in the later effort?

ZIEROLD: Following that, some few years later, there were additional pressures on CEQA that came as a result of the Dow issue in the North Bay.

LAGE: I think that was '76.

ZIEROLD: That was '76. The public relations efforts that Dow and others put together were very effective. They were able to persuade a lot of newspaper editorial writers and many people in the legislature that CEQA was a kind of berserk proceduralism. That it was outrageous as a burden on Dow and other companies, and that it was destroying economic growth in the state. No businesses would ever settle in California. No industries would come here because the California Environmental Quality Act made it impossible for them to do practically anything. That, regrettably, taken together with the changing character of the Legislature, meant that now we had much more of a threat to CEQA than the people brought in 1972 and which led to AE 889.

Leo McCarthy, who was as concerned about it as we were, set up a meeting in his office with me, Larry Moss, and Tom Willoughby, chief consultant to the Assembly committee and the one staffer in whom Leo McCarthy had the utmost confidence. We devised a plan to defuse the opposition to CEQA. The first decision that had to be made was to provide more certainty in a shorter time frame for the permit process than was in the original bill. That was basically it. There were other changes made as well, but that was the one which dealt effectively with the charges being made by the Dow PR campaign. But Dow still hangs on.

LAGE: You mean the influence?

ZIEROLD: Yes. The whole Dow issue is something which ought to be the subject of an interview session, or at least part of a session. I think it should be dealt with separately.

LAGE: The Dow issue itself and then its ramifications?

ZIEROLD: Yes. Because it was the campaign waged by Dow against CEQA that led to Leo McCarthy making changes in the act that, as I say, shortened the time frame, gave them better certainty, made some other procedural changes which did away with duplicated comment — the problem of agencies making comment on a matter which was basically outside their jurisdiction and frequently outside their competence.

LAGE: Did the environmental reviews just have to be written, or did they really have to be incorporated into the decision-making on the project?

ZIEROLD: Oh, they had to be dealt with. Under the EIR [Environmental Impact Report] procedure, one files a notice stating that a project is being submitted for approval. And then there is a scoping session where the applicant meets the lead agency, as it's called, which is that agency in government which has the authority to grant the permit.

They require that meetings be held by the firm conducting the EIR and what are called responsible agencies. These are agencies which don't grant the permit but which would have a jurisdictional interest in some of the issues that arise as a result of the proposed project. They, then, over a forty-five-day period discuss what ought to be in the EIR and make comments on the project.

Then the EIR is produced in draft form. It's submitted to the lead agency and distributed to all responsible agencies, given to the Office of Planning and Research, and made available to the public for examination. Then those comments that are submitted in writing by the responsible agencies are dealt with in one way or another, either incorporated directly into the final EIR or discussed and perhaps not adopted if recommendations are made.

That, in a very general way, is how an EIR process works. Then the lead agency makes a decision as to whether or not it will grant the permit. Following that decision there is a thirty-day period during which time the public can review the decision. And a legal challenge can be brought if people don't like the decision made by the lead agency.

That used to take two years or more. A long time to wait, obviously. So charges of obstructionism always arose, charges that this was far too long and too costly. So much money during a period of inflation was required just to keep the project alive.

The interest rates on the money were such that the project became infeasible in some instances, or so they argued. Also, it depends upon how they borrowed the money, too. How the draw down of a loan was scheduled. It's very complicated business, obviously. So it was felt by Leo, quite rightly, that the best way to deal with this was to defuse it and make some concessions, all of which turned out to be sensible ones, and preserve CEQA. which, again, we did.

LAGE: Overall, has CEQA brought a real change, do you think?

ZIEROLD: I think so.

LAGE: Not just paperwork to satisfy the law?

ZIEROLD: No, it's more than just paperwork. Certainly, air quality is the best case in point. How else could we do it other than to require monitoring of air quality over a year's period of time for major projects like power plants or refineries, determining what the best available control technology is and requiring it, making an analysis of what pollutants are emitted by certain industrial installations — NOX [nitric oxide], and SO<sub>2</sub> [sulfur dioxide], and particulates and carbon monoxide, ozone. It is necessary.

Another interesting part of the fight on CEQA was in 1975 right after Brown took office, when Judge Arthur Broaddus in Humboldt County ruled on a lawsuit that CEQA applied to timber harvesting.<sup>3</sup>

The timber industry went looney over that. They held demonstrations here in Sacramento in January and in February. They brought down logging trucks that rumbled around the Capitol. And they blew their horns and intimidated people in the Brown administration who were new to Sacramento. Claire Dedrick, for example, was secretary for resources. And while Claire isn't the sort of person who's intimidated, it was nevertheless somewhat unsettling to be hanged in effigy, as I believe she was or Brown was, and to be constantly pressured on this. They were a rowdy bunch. No EIR had ever been required of the timber harvest operation.

None ever had. None ever have.

LAGE: How did they get to court?

ZIEROLD: I guess a lawsuit was brought against some timber harvesting plan by a person who didn't want to see it approved.

LAGE: I see, who requested the EIR.

ZIEROLD: Because he or she probably was a landowner adjacent to that particular area where the cutting was to take place. Or maybe he was a little bit downstream of it and was fearful of a lot of sediment getting dumped into the stream, or for some other reason. Who knows why? At any rate, it was a CEQA lawsuit. I suppose this person filed an action for injunctive relief, maybe a temporary restraining order. And Broaddus, as

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<sup>3</sup> *Natural Resources Defense Council v. Arcata Redwood Co.* (Cal. Super. Ct., Jan. 14, 1975); *N.R.D.C. v. Arcata Nat'l Corp.*, 50 Cal. App. 2d 959 (1976).

I recall, ruled that yes, they were subject to EIRs. Then the timber industry felt that it was necessary to abolish CEQA because to prepare EIRs for cutting plans would be a heavy burden financially. I think that most people agreed with that.

LAGE: They already had to do something of the sort, which we're going to talk about soon, to meet the Forest Practice Act.

ZIEROLD: True, a timber harvesting plan. What happened was the writing and the passage of SB 727 by Senator Nejedly that created a functional equivalent. The functional equivalent of an EIR for forest practices was an addendum to the timber harvesting plan, an expansion of the information ordinarily contained there, prepared in such a way that it could be submitted to the Department of Fish and Game and other departments in the Resources Agency for review and comment and for suggested conditions that might be attached to the permit by the state forester, who had the approval authority. That's ultimately the way it came out. It was a bit of a difficult lobbying job. We worked at it quite extensively.

LAGE: This was something you were supporting?

ZIEROLD: We were in support of that. We thought it a reasonable solution. There were some people who wanted to require programmatic EIRs for the five-to-ten-year cutting periods. That suggestion had been made by Mike McCloskey as part of a model forestry act that he had drafted and was circulating for comment. It wasn't something that he had fully completed at the time, but it was Mike's belief, and I think a correct one, that the real problem lay with the large timber companies and what they wanted to do over extended periods of time. The five- and ten-year cutting plans should be subjected to a more rigorous examination than we'd ever had before. It was argued that we should have EIRs on those and then perhaps have some other approval process for the small operations.

It didn't work out that way. What did work out was the so-called functional equivalent, which was an expansion of the THP [timber harvest plan].

LAGE: And that was supported by the Brown administration, as I recall.

ZIEROLD: Finally.

LAGE: That took some work too?

ZIEROLD: Yes. Actually. Jerry Brown claims credit for the idea of the functional equivalent. But SB 727 really wasn't supported effectively until it had moved some distance out of the Senate. Then it was supported by the Brown administration. You'll maybe get a somewhat different story from the Brown administration if you were ever to ask them, which I don't suppose you will. But I don't think it's an especially important point. The point is that most of the lobbying was done by Larry Moss and by me. In '75 Larry was the deputy secretary of resources. Larry worked on that. The McCarthy CEQA refinements came after Dow.<sup>4</sup>

LAGE: So we will talk more about Dow another time.

ZIEROLD: Because I think that, while it obviously is part of CEQA. I think there is a follow-on feature of Dow, which is to say a kind of turning point in Sacramento. I think the mood changed somewhat as a result of Dow. While it was a CEQA issue, it spilled over into what passed for the environmental consciousness of the Legislature.

LAGE: When we talk about the environmental mood in Sacramento, at some point we should connect that with the mood in general in the state.

ZIEROLD: That's a good idea.

LAGE: Is it reflective of the state?

ZIEROLD: No, it's not. Not now. It was in the early '70s when perhaps the reflection here was a reflection of the environmental movement and not the public at large. There has been an odd reversal. What we were able to do in 1970 through '72 and perhaps on into 1976, to some degree exceeded the real mood. It was like a funhouse mirror in which the image appears larger than the self. Now it's the reverse. They look through the wrong end of the telescope, so to speak. What the Legislature reflects is far, far less than what the general public feels.

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<sup>4</sup> In 1977, the Dow Chemical Company abandoned plans to build a large chemical complex in the Suisun Marsh area of northern San Francisco bay, citing restrictive environmental regulations and burdensome procedures as the reason.

*From the Oral History of*

## THOMAS J. GRAFF

*California Regional Director of the Environmental Defense Fund, 1971–2009*

Interviews conducted by Ann Lage in 2009, Regional Oral History Office, The Bancroft Library, UC Berkeley.<sup>1</sup>

LAGE: I think we had decided to maybe start with some thought about where you stand in the annals of environmental law?

GRAFF: Okay. Good. Yeah, EDF's motto when I first joined was "Sue the bastards." And particularly in my first — well, really three or four years at EDF, in the early seventies, I complied with the motto.

LAGE: It was sort of what you thought you were expected to do —

GRAFF: Right.

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<sup>1</sup> Presented here is a brief excerpt from Thomas J. Graff, "California Regional Director of the Environmental Defense Fund, 1971–2009: Applying Economics to Environmental Policymaking, Reforming California Water Policy," an oral history conducted by Ann Lage in 2009, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2011. © 2011 by The Regents of the University of California.

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LAGE: — a lot of litigation. Was this a motto that they spoke about openly, or it was just in the background?

GRAFF: No, it was definitely part of the landscape. It was discussed as such.

LAGE: And your training.

GRAFF: To the extent I had training in litigation at all, it was to view issues from a litigator's point of view. But the reality, even in the early days — and certainly later, for me — was that I didn't litigate much, if at all, in the traditional way people do that, which is with depositions and interrogatories and the trappings of modern civil procedure.

LAGE: Even from the beginning, you're saying?

GRAFF: Even from the beginning. I'll give you a couple —. The only real counter-example wasn't litigation at all, but I got involved in early PUC cases, California PUC cases, which are administrative hearings. Although they're sort of formal and they have cross-examination and —

LAGE: And you use your legal skills.

GRAFF: Your skills, right. So I did a couple cases like that. But in the cases I actually filed in court, or I was involved in in court — the *Coastside* case,<sup>2</sup> which we've discussed; CEQA case;<sup>3</sup> the Auburn<sup>4</sup> and New Melones<sup>5</sup> cases, which were anti-dam environmental impact statement cases —

LAGE: Sort of traditional at that time.

GRAFF: Right. Well, they were pretty new at that time.

LAGE: But that's what was happening at the time.

GRAFF: Right. And then in a way, the most interesting, the litigation against East Bay MUD [Municipal Utility District]. They were all pretty much litigated on the pleadings.

LAGE: On the what?

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<sup>2</sup> Environmental Defense Council, Inc. v. Coastside County Water District, 27 Cal. App. 3d 695 (1972).

<sup>3</sup> Planning & Conservation League v. Department of Water Resources, 17 Cal.4th 26 (1998).

<sup>4</sup> Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist., 20 Cal.3d 327 (1977).

<sup>5</sup> Environmental Defense Fund, Inc. v. Armstrong, 352 F. Supp. 50 (N.D. Cal. 1972).

GRAFF: Pleadings. Motions for summary judgment. But not a lot of prep time with witnesses, in advance of the actual appearances in court. I had some distinguished witnesses that I put on the stand at the PUC. In particular, Bill Vickrey, who became a Nobel laureate in economics, testified on time of day pricing. . . .

Back to East Bay MUD. I remembered something that I'd forgotten but I did not know at the time we filed the suit, that was probably the most innovative suit I ever filed, or innovative legal action.

LAGE: Now, tell how it was innovative. We talked about it, but really not in any depth, from a legal point of view.

GRAFF: There're basically two theories for getting at the fundamental tenets of California water law. It's much more complicated than I'm going to make it sound in the next couple of minutes, but basically, California water law is based on prior rights. So if you got there early, you have the water and it's almost an ownership interest. And that potentially causes a lot of problems, because what made sense and was an economic activity in 1880 or in the 1920s, when East Bay MUD really got going, does not necessarily make sense in 2009, or even in 1972.

LAGE: When you filed your suit.

GRAFF: When I filed the suit. But challenging the prior rights system directly and saying it's outmoded is problematic, from a legal point of view. And not just because we have a conservative judiciary, both in California and nationally. There's something to be said for some form of property right in water. Anyway, so there're basically two theories that have evolved over the years to at least chip away at the prior rights, prior appropriations concept. East Bay MUD, by the way, is not directly applicable, because it's a contract with the federal government and we were challenging the contract, basically.

LAGE: You mean their right is based on a contract with the federal government?

GRAFF: Right.

LAGE: But didn't they buy up water rights, a lot of the —

GRAFF: Yes, that was earlier. That was much earlier. But they wanted a supplemental supply.

LAGE: I see.

GRAFF: And our two theories in the lawsuit were, one, that any supplemental supply was a waste of water; that they could reclaim existing water and undertake conservation measures. So that's, in a way, an attack on the prior rights because it meant they had to use their prior rights more efficiently. That was our theory. The second theory was that there was unreasonable diversion of water because they wanted the secondary supply, upstream on the American River, depriving the city and county residents of Sacramento County — as the river flowed down to the Sacramento — of recreational and environmental rights and fisheries interests. . . .

LAGE: Did you think this through on — did you draw on some thinking at the time, as you filed this —

GRAFF: Well, there was a young guy who had just graduated from Boalt, I think — maybe Hastings — named Steve Cavellini. And he and Jerry Meral were involved in kind of designing the suit. Once the suit got going, I brought in one of my quite brilliant law school classmates, by the name of Bruce Dodge, who was in one of the downtown firms in San Francisco. I think Morrison and Foerster. But it was a group effort, basically.

The other innovative piece of the suit, which turned out to be the piece of it that got it noticed, ultimately, by the U.S. Supreme Court, was that it was a tricky combination of federal and state law, because this was a federal contract with the Bureau of Reclamation. And so we debated back and forth for a long time, before filing the suit, two things. One, whether to file in federal court or state court; and two, whether to include the federal government as a defendant. We finally decided to file in state court, in Superior Court in Alameda County, and not to join the feds.

LAGE: And why?

GRAFF: I can't remember all of the thinking, but it was basically that what we were really challenging were issues of state law, not of federal law, and not of contracting and so on, and we were better off without the feds in. And we guessed — and as it turned out, correctly — that for its own reasons, East Bay MUD also would not want the feds in the case. But it was always lurking in the background.

LAGE: So you didn't sue the bureau.

GRAFF: No, just East Bay MUD and its directors, I think.

LAGE: I wonder why the East Bay MUD didn't want the feds in.

GRAFF: Well, I think because — I don't think it was because they didn't think they were reliable allies. Maybe they thought it would slow down the whole contracting and approvals. In order to make this happen, in the old formulation, they would've needed water out of the old Auburn Folsom South project, flowing down the Folsom South Canal. And Auburn Dam was already controversial. There was other litigation, ours included, going on on that. So I don't know the answer. And I think maybe they thought they could get the state courts to throw the case out, on the basis that an indispensable party, namely the federal government, was not a party. And then there's also complex jurisprudence around when the federal government can claim sovereign immunity from prosecution by private parties.

LAGE: Were you concerned that the Alameda County courts would be sympathetic to East Bay MUD?

GRAFF: Well, a perfect question. [Lage laughs] Only many years later, did I learn that the Superior Court judge, who's name was Brunn, behind everybody's back, ours and East Bay MUD's, asked Mike Heyman, who was then a professor at Boalt, for help in the case, because it was a complex —

LAGE: To help him sort it out?

GRAFF: Sort it out. And Heyman assigned, I don't know how many, but some Boalt law students. And they were working in the back rooms, unbeknownst to us.

LAGE: Is this something that happens a lot? So the judge is getting consultants —

GRAFF: It's like a special master, consultants, yeah.

LAGE: But it wasn't upfront.

GRAFF: It wasn't upfront. I don't know how I eventually learned about it, but it was interesting. . . . Anyway, so Mike helped the judge. And the judge wrote a quite erudite opinion on this simple little case.

LAGE: The Superior Court judge.

GRAFF: Right.

LAGE: And in your favor?

GRAFF: No. Well, it depends how you define favor. He ruled against us; but he put in all kinds of stuff that clearly would interest the Court of Appeal, so that they would take the case seriously.

LAGE: Fascinating! And also considering that environmental law was sort of in its infancy, this behind-the-scenes effort of Heyman and his students would, you would think, have some impact on environmental law.

GRAFF: Right, and something similar happened in the *Coastside* case. Again, I think the judge —. And this was surprising to me at the time. I should've known better, but it was in the air. Environmentalism had just come in, was coming into its own. So the judges were interested in it, too.

LAGE: Sure.

GRAFF: Right? So the court of appeal decision in the *Coastside* case also showed a lot of thought. In the last few decades, there's this whole question of, do judges make law or do they interpret law? This was really a set of cases in the early seventies — and not just mine, many others, too — where judges were having to make it up as they went along.

LAGE: Yes, they really had to make it up because it didn't exist.

GRAFF: Right. That's right. David Sive, do you know that name?

LAGE: Yes, I interviewed him.

GRAFF: Oh, you did?

LAGE: Yes.

GRAFF: He did stuff like that in the *Con Ed*<sup>6</sup> case and . . . then, of course, the *East Bay MUD* litigation, which never had witnesses. Well, it had witnesses in a much later stage, stages.

LAGE: So this early part was not witnesses, it was —

GRAFF: It was all on pleading.

LAGE: — just discussion of the law?

GRAFF: Right, right. Yeah. I think — I moved for summary judgment, so they assumed our facts were valid.

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<sup>6</sup> *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965).

LAGE: I see.

GRAFF: Which they were. But they —

LAGE: They weren't disputing the facts —

GRAFF: They were all on the record. Right.

LAGE: — they were disputing the law. . . . And then, of course, the litigation went on for a long time after Judge Brunn's ruling. It went to the Court of Appeal. . . . And did you carry it on in the Court of Appeal?

GRAFF: Well, Bruce Dodge and I did the appeal brief together. And just as an aside, I think I mentioned in one of the early interviews that a cataclysmic moment in my life was when I got my grades from first year law school. I was sixth in my class; Bruce Dodge was fifth.

LAGE: Oh! [they laugh]

GRAFF: Anyway, he's an interesting guy. We got sidetracked off the legal theories. Waste of water, unreasonable diversion, and unreasonable use were all kind of untested theories, in terms of kind of the actual practice of a utility or of a water agency. The other big strand of law that attacked the prior rights doctrine, in some sense, was the public trust. And of course —

LAGE: And was that at that time —

GRAFF: That was brewing at that time. And the most notable advocate of the public trust, from a legal point of view, was Joe Sax; whereas Charlie Meyers, who I mentioned earlier, was the most active proponent of using water markets as a different way of loosening prior rights. Basically, allowing sale —

LAGE: But it's not really — is that a legal theory, or just a kind of a practical accommodation to prior —

GRAFF: Well, that's an interesting question again, because one of the unanswered questions — here we are thirty-five years, thirty-seven years after the National Water Commission report, on which both Sax and Meyers were staff. How much of the resistance to water markets over the years has been based on a set of legal theories, and how much has just been good old boys, or "that's the way we've always done it, that's the way we're going to keep doing it" kind of thinking.

LAGE: But would the resistance be coming from the public trust people? The public trust proponents?

GRAFF: Well, we have critics — I'll use the old terminology — on our left who are big public trust advocates, who don't —

LAGE: And they'd rather attack the doctrine of prior appropriation?

GRAFF: Yes, attack it head on and say, "That old use is no good anymore and it ought to be something else." And there is some precedent in California water law. The most famous case is *Joslin v. Marin Municipal Water District*.<sup>7</sup> . . . The issue there was a gravel mining operation on a stream where the growing areas of Marin wanted to use the water for municipal use. And to the surprise, I think, of many, the California Supreme Court said, if it's a higher use, the old gravel operation has to give way. So there is some —

LAGE: That's quite a precedent.

GRAFF: Right. But here it is forty years or more later, forty-five years, and that and the *Mono Lake* case<sup>8</sup> — which, by the way, Bruce Dodge also was a key litigator in — have chipped away at the prior rights doctrine. And in that article I wrote in 1981, I kind of allude to the shakiness of the Imperial Irrigation District's prior rights, which also are complicated because it isn't clear that it's the district's right or the farmers' right. And it's a federal project and — But the Imperial Valley was there before the Colorado River Compact and the Hoover Dam. So none of these water law questions are easy. So these are to some extent competing, and to some extent complementary theories for direct legal challenge or indirect legal challenge of the prior rights system. But we're 130, 140 years into the prior rights system.

LAGE: It's hard to overthrow it.

GRAFF: Right.

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<sup>7</sup> 67 Cal.2d 132 (1967).

<sup>8</sup> Nat'l Audubon Soc'y v. Superior Court, 33 Cal.3d 419 (1983).

*From the Oral History of*

## HENRY J. VAUX, SR.

*Dean of the UC Berkeley School of Forestry,  
1955–65; two-term chairman of the California  
Board of Forestry, 1973–83*

An interview conducted by Ann Lage, 1984–1986, Regional Oral History Office, The Bancroft Library, UC Berkeley.<sup>1</sup>

VAUX: [I]n January 1975, two things happened. The new governor, Jerry Brown, came in with Claire Dedrick as his resources secretary. Almost simultaneously, a court in San Francisco handed down an opinion in the case of *Natural Resources Defense Council v. Arcata Redwood*.<sup>2</sup> This opinion held that forest practices regulation was subject to the constraints of the California Environmental Quality Act. . . .

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<sup>1</sup> Presented here is a brief excerpt from Henry J. Vaux, “Forestry in the Public Interest: Education, Economics, State Policy, 1933–1983,” an oral history conducted in 1984–1986 by Ann Lage, Regional Oral History Office, The Bancroft Library, University of California at Berkeley, 1987. © 1987 by The Regents of the University of California.

The oral history excerpts in this “Environmental Law — Oral History” section are intended to provide personal commentaries on the topics discussed in the preceding Environmental Law “Articles” and “Book” sections. This excerpt relates to the article: Darren F. Speece. *From Corporatism to Citizen Oversight: The Legal Fight Over the California Redwoods, 1969–1999*, in this volume, 13 CAL. LEGAL HIST. 57 (2018).

<sup>2</sup> *Natural Resources Defense Council v. Arcata Redwood Co.* (Cal. Super. Ct., Jan. 14, 1975); *N.R.D.C. v. Arcata Nat’l Corp.*, 50 Cal. App. 2d 959 (1976).

The California Environmental Quality Act had been passed in 1969, so it was on the books and we knew it was there. But all that the California Environmental Quality Act does is establish procedures and require that certain problems be addressed; it doesn't make any action mandatory other than procedures.

LAGE: Procedures for environmental review.

VAUX: Yes. I know my intuitive conception was that the Forest Practice Act actually told people what they may and may not do. That's so far beyond the procedural thing that intuitively I felt there should not be any conflicts. So it blew my mind when the court found that on legal ground the California Environmental Quality Act did apply to timber harvest operations.

That threw everything into total chaos because the permitting system and the rules that had been implemented by the board . . . had not paid any attention to the constraints of the California Environmental Quality Act. Those rules had been drawn by a board entirely appointed by Governor Reagan, so that there wasn't very much environmental sympathy on that board, or in the district technical committees. So the whole system had not been very environmentally oriented. . . .

So in January '75 at the same time the new governor came in this lawsuit was handed down requiring that the terms of the California Environmental Act had to be recognized in relation to forest practice regulation. That meant that every timber harvest plan issued in 1974 as good for three years was held to be illegal.

That immediately created a furor and led to the march on Sacramento where the loggers all drove down and milled around the Capitol with their logging trucks and so on. Two or three days after the Brown administration had taken office poor old Claire Dedrick was hung in effigy.

LAGE: But she simply had nothing to do with that ruling.

VAUX: That's right, but the solution was up to her. I mean, that's the way political things go often. It is not the person responsible for posing the problem who has to bear the brunt of solving it. Claire sorted that all out in terms of something called functional equivalency. The California Environmental Quality Act had provided that the resources secretary could certify certain processes other than the normal CEQA-EIR stuff as functionally equivalent. If so, then those alternative processes would have the force of law.

Claire decided that the approach to use was to arrive at a position where the timber harvest planning process and the forest practice rules could be certified by her as functionally equivalent to the environmental impact process. . . .

I guess that's enough about the atmosphere at the time of my appointment [as chairman of the Board of Forestry by Governor Jerry Brown in 1976]. . . .

[My predecessor] Howard Nakae asked me to lunch one day and passed on words of advice as to how one ought to run the Board of Forestry. One piece of advice that he gave me was, "Just keep Redwood Creek off the agenda, and you'll be all right." I didn't know enough at that time to realize that that was rather futile counsel.

At any rate, I first sat on the board on June 24, 1976, and the next meeting of the board was on July 22. That meeting was held at Chester by a previous decision. It turned out that the agenda at that meeting had to be given over to a discussion of Redwood Creek anew. That was a very wearing experience for me because I had never presided over anything like it. It was billed as a discussion, but essentially it was a loose public hearing with all the interested parties able to address the board on the subject. It was designed to be an effort to let people air their views and let off a little steam, and perhaps something useful might come of it.

There were a very limited number of things that the board could do in relation to Redwood Creek. Obviously, the administration and other people were under a lot of pressure. It was the kind of situation where one of the things is to let the safety valve pop off and at least let people talk someplace where they feel they're talking to somebody who is in a position to at least listen to them and maybe react to them, rather than just beating their drums in the newspapers.

LAGE: Maybe we should set the scene a little bit or maybe you're about to do that. Tell what was happening with Redwood Creek.

VAUX: I was going to try to do that, yes. The Redwood National Park was originally set up in 1968. Whether by deliberate design or not — I can't escape the feeling that it was deliberate design on some people's part — it was a design for disaster. Because the original redwood park consisted, so far as the federal land is concerned, of a relatively small acreage of twenty

thousand acres or so of largely virgin timber at the lower end of Redwood Creek around the town of Orick.

Then, south of that area, a strip was included in the park that was a quarter of a mile on each side of the bed of Redwood Creek, running from this Orick area on upstream to the so-called “World’s Tallest Tree.” This strip is about seven miles long. It became familiarly known as “the worm,” because that’s what it looked like on a map, kind of a wriggly thing that followed the stream bed up.

That land was put into federal park ownership, but the hillsides above that on either side remained in the ownership of the timber companies. The original park act gave the secretary of the interior authority to make agreements with the timber companies on measures needed to log those areas in ways that would protect the park, but the secretary of the interior never entered into any such agreements. Without knowing much about the inside of it, my view of that was that it was because the federal government was too tight to do it, or else it was deliberately too tight in order to try to force a crunch that would lead to different action.

LAGE: To more park area?

VAUX: Yes. I should point out that the redwood park consists of other areas besides this. There’s another area up around the Jed Smith State Park. When I talk about the redwood park, I’m talking primarily about the Redwood Creek part of the redwood park. As you know, the Redwood National Park is built around parts of two or three state parks, and the two or three state parks really include the gems, if you’re interested in cathedral-like redwoods. There are some very nice old growth redwoods in the federally-owned park, but I don’t think there’s any doubt that they aren’t quite as magnificent as the ones that are in the state parks.

So I had never had any particular enthusiasm for the whole idea of a Redwood Creek national park. The upper end of Redwood Creek had been despoiled long before; the upper end of Redwood Creek is not redwoods, it’s Douglas fir. That area had been logged in the fifties with very much less care than was being exercised in the seventies. As a result of that, and as a result of highway construction and some actual subdivision up in the northern reaches of Redwood Creek, there was just a desperate situation where the whole country was falling down into Redwood Creek.

All that stuff over time, the debris that arrived at the bottom of the slopes, was being pushed down by each storm, and is still being pushed down, and is going to go right through the national park. That just seems to be not a very wise location.

LAGE: So you think the actual choice of including Redwood Creek in the national park was a mistake?

VAUX: When I contemplate what could have been done for national parks as alternatives by the expenditure of the same amount of money, I think it's a real tragedy. As you probably know, hundreds and hundreds of millions of dollars have been spent on the Redwood National Park. A hundred years from now, I'm sure it'll be a magnificent, beautiful area, and probably people will receive proper tribute for it. But in the meantime, it seems to me it's a kind of a disaster area.

Remember that, I don't know what the figures are, but if you look at the attendance at the Redwood National Park and follow where those people go, I think you'd find that a considerable number of people will go up and see the Lady Bird Johnson Grove, but most of the people are going to go, and are going, as they did before the Redwood National Park was ever dreamed up, to Prairie Creek, to Jed Smith, and to the Del Norte Coast parks. All of those were state parks long before the Redwood National Park was bought. There isn't any doubt that the creation of the national park gave a modest stimulus to visitation in the area, and that's been of some significance to the regional economy. But in the very nature of the case, since the recreation business is highly seasonal, and particularly in redwood park, where it's not a resident recreational use, it's a kind of a transient I mean people don't go and stay there and hike the way they do in Yosemite.

LAGE: They drive through.

VAUX: It's a drive-through kind of thing. The impetus to the local economy has been modest, I would say, and far, far less than the proponents of the park were suggesting it would be. So, I have felt if somebody could have persuaded the whole redwood park issue to go away about 1966, it would have been a fortunate thing for all concerned.

I think as time goes on, its major importance may have been not the physical park itself, and again I'm talking about the part in federal ownership, but the political symbolisms that the redwood park controversy

brought out. Those I think had lasting effects. In other words, the redwood park issue energized a whole lot of political action that was just waiting to be energized and had effects that had nothing to do with the question of whether redwood park was a good idea or not a good idea and the question of where it should be put.

There was one other point I wanted to make as part of this background. Part of the background here is, “What was the Board of Forestry doing involved in this anyway?” because the Board of Forestry had absolutely no authority one way or another to determine whether there would be a park or would not be a park, and if there was going to be a park, where it would be.

The Board of Forestry probably could have made a policy statement either favoring or disfavoring a park, which would have had totally no effect, because the board had no political constituency of its own. And in the face of the uproar that was going on between the industry and the environmentalists and the Sierra Club and the North Coast Ecology Center, and all the little rump groups that emerged over that thing, whatever the board had said wouldn’t have been listened to.

The reason the board was in it was because there were mechanisms which meant that all the various partisans, regardless of what their point of view, could use the board to get publicity for their point of view. The reason the board could be used was that timber harvest plans had to be approved by the state, and the companies who owned the land outside the park in Redwood Creek were engaged in logging timber on those slopes above the park, and that logging created a very incendiary atmosphere because its appearance is very destructive. So it became natural for the process of approval of those timber harvest plans to come under very close scrutiny.

The Nakae board had been asked to declare a moratorium on timber harvest plans in the Redwood Creek area until such time as the park issue was settled. The Nakae board had refused to do that, and I think properly, because I don’t think the Board of Forestry had any statutory authority to declare a moratorium on timber harvest plans. I mean, it’s one thing to have regulatory authority, and it’s another thing to just arbitrarily declare a complete suspension of timber cutting because somebody wants to think about a park in an area. . . .

So this discussion at Chester was essentially an airing of various aspects of public opinion. It focused, because of the nature of the testimony,

on two issues that the pro-park people had picked up and were very concerned about. They were trying to get the board to recognize the importance of two things: one, so-called cumulative effects, and another, the importance of long-range planning.

The cumulative effects issue is difficult to deal with because there never has been full clarification of what cumulative effects are, in a rigorous sense. But the basic notion of it is that if you clearcut ten acres in a watershed, the effect is probably fairly minor. If you clearcut two thousand acres in the same watershed within an equally short period of time, then the effects become —

LAGE: Cumulative. [laughs]

VAUX: [laughs] It's a tricky term, though, because it's argued by some that this is simply a multiplicative effect, not cumulative. Behind the notion of cumulative effects, as it's emphasized by the people who believe in this line of approach, there's some synergism involved, so it isn't just a multiplicative relationship; the effects are much more powerful, not in a multiplicative sense as you increase the area, but in some kind of exponential sense. In certain kinds of effects there may be some validity to that, I think.

LAGE: Is this something that's argued among foresters? Are we talking about differences in points of view among foresters?

VAUX: The cumulative effects argument has been made most strongly by the environmentalists. Some foresters shared their view, others didn't. They have criticized the forest practice rules repeatedly for failure to deal with cumulative effects.

In May of 1977, we came back to Redwood Creek. There's quite a lot to say about that.

LAGE: I assume not too much was happening with the redwood issue after the Chester hearing.

VAUX: Well, a lot was happening in the redwood issue, but not at the Board of Forestry. As I said, the board really had no concern with Redwood Creek, except through timber harvest planning. Following the Chester hearing, while there was grumbling and discussion going on, nothing happened in the timber harvest planning aspect of Redwood Creek to bring it to the attention of the board.

There was a lot happening at the congressional level, which was where the action was and should have been: in the sense that bills were introduced, and those were going through hearing, and that sort of thing.

LAGE: Did timber harvest plans come before the board during that period?

VAUX: No, because the director approved timber harvest plans during that period, and this was a continual source of irritation to the pro-park expansion people. But so long as the director [of the Department of Forestry] was approving plans, there was no occasion for the board to look into the situation. . . .

All during the summer and fall of 1976, and earlier even, the Resources Agency, the Division of Forestry (as it was then), the Park Service, the landowners, with all kinds of lawyers including the state Attorney General's Office, and the U.S. Attorney General's office, and the Natural Resources Defense Council looking over their shoulder every step of the way, had been involved in trying to develop special procedures for the review of timber harvest plans in Redwood Creek. Actually, many of these procedures were used informally in review of Redwood Creek timber harvest plans but many environmentalists wanted rules requiring these procedures.

Those timber harvest plans were probably more closely scrutinized than any other timber harvest plans that have ever been written. I think there was more danger to environmental values from people stomping over the ground in the course of determining whether the plans could be approved or not — that's an exaggeration — but it illustrates the point, that the intensiveness of the discussion and information exchange was unprecedented. All that was going on and was kind of the holding action that was being mounted, and so the processing of plans was extremely slow and not very many of them came along.

Until the spring of 1977, the director had, in fact, approved all the plans that had made their way through that maze of special procedures that had been developed.

LAGE: Was Lew Moran still the director?

VAUX: Yes. Review teams had been developed as a device for meeting the requirements of CEQA. Even though there was no statutory requirement for them, they were used in fact in those Redwood Creek plans. It wasn't until April or March — I'm not sure about the precise dates but along in

that period — with legislation at the federal level to establish the park now at the committee hearing level — not just introduced, but at the level of committee hearings that Lew Moran denied the first Redwood Creek plans.

There were three of them, two Louisiana Pacific plans, and one Arcata Redwood plan, which were denied at about the same time. The companies, in line with their rights under the law, appealed those denials to the board. So everything was set up for a hearing on May 12 or 13, 1977, I've forgotten which, on appeal of the denial of the Redwood Creek plans. That was quite an affair.

Now, there was some preliminary action. We had seen the question coming down the road, we knew the plans had been denied, we knew they'd be appealed. In expectation of that, I had written a letter to the attorney general, Mr. [Evelle] Younger, asking him two or three specific questions that had to do with the board's authority to deny these plans. The questions were thought out rather carefully, and were quite specific as to what the limits on the board's authority might be.

LAGE: Were the questions regarding how you should consider the pending legislation?

VAUX: No, it had nothing to do with the legislation; they had to do with the board's authority and the director's authority to deny timber harvest plans, and what kinds of considerations could be taken into account in arriving at that determination. If you want to have access to the letter, I can dig it up from somewhere, I'm sure it's around. But I'm sure that also it's a matter of record in the Attorney General's Office and the Board of Forestry office, and elsewhere. . . .

Now, this hearing was a very long and wearing process. It ran from about a quarter of nine in the morning until ten-thirty that night, so everybody was just ragged by the time it was over.

LAGE: Was this Sacramento?

VAUX: In Sacramento, yes. And there was quite a crowd there; we had to get a special room to provide room for everybody to be there. I was concerned because we'd had a couple of appeal hearings before, so I'd had a chance to get a little bit familiar with the appropriate procedures for these hearings. The more familiar I got with them, the more confusing they seemed to me to be.

We had a vary good man from the Attorney General's Office to guide us in these matters, Mr. Robert Connett, and he'd had a long experience with the board. But he had a way that many good lawyers have when you ask what you thought was a straight question, and you get back something that is very, very hard to understand as an answer to the question, sometimes. That's not a criticism of him, it's a question, as I understand it, that a lot of times the law isn't clear, and an attorney isn't going to stick his neck out and say, "Yes, this is it," when the law doesn't say so.

There was a lot of this in hearing cases, in that the statute just wasn't very clear on who did what to whom in the course of a hearing. The one thing that Connett made perfectly clear was that the law gave the chairman a lot of discretion as to how the hearing should be run. That placed me under some pressure to try to run it in a way that would not be subject to too much challenge subsequently.

So this matter of the procedures was lurking in the background all the time, to be sure that everybody was given due opportunity to have their say, but nobody was given an opportunity to say too much [chuckling].

LAGE: Or you would have been there two days from 8:45 a.m.

VAUX: The question of the time duration really wasn't germane, no. The question was that now this was a legal proceeding. We knew that whatever the board found, it was going to be contested in a higher court. So unless the proceedings were justifiable in terms of the statute that outlined those proceedings, that would be the first ground on which somebody would throw out whatever decision the board had made.

Everybody, on both sides, I think, was anxious that proper procedures were followed. You never want to have stuff thrown out on procedural grounds if you're trying to defend the position of the board because that just means you haven't done your homework properly, or you've committed a procedural boner which doesn't reflect well on the board at all, regardless of what substantive answer you came out with on the issue of redwood park.

LAGE: You had several attorneys on the board, as well. Did having attorneys on the board present any special —

VAUX: We had two attorneys on the board, and we had another attorney serving the board, a representative of the Attorney General's Office.

In general, Mr. Berry and Mr. Pesonen, I thought, showed quite a bit of restraint in that they didn't attempt to practice law as well as being on the board. I mean, they brought legal backgrounds, which, in the main, I think, were helpful.

Occasionally, it got difficult to follow some of the discussions about legal matters between those people and the attorney general, but I was never aware that they were trying to second guess the attorney general, who was our legal counsel. Pesonen and Berry were always careful, I think, to observe and to stress that they were not the board's legal counsel. In many cases, in drafting findings and things of that sort, which have to go along as part of the legal process, they were very helpful because of their legal knowledge.

Now, I mentioned the letter I had written to Attorney General Younger. As I went to the hearing at eight o'clock that morning, I still hadn't received a response to my inquiry. I got to the hearing room, and shortly after I arrived and just before I was going to convene the hearing, a representative of the Attorney General's Office handed me the attorney general's response.

I quickly read it, and fortunately I was enough awake to realize that in some subtle way the attorney general had changed the question. While the thrust of his opinion, as I read it, was that the board didn't have the authority to deny these plans, the question that the attorney general responded to, and which he put into the letter, was a different one from the one I had asked.

That's not an uncommon thing; lawyers will often rephrase questions that are asked of them. But nevertheless, the question, for whatever reason, had been modified slightly. And because of that. I thought that the answer really wasn't responsive to the question I had asked. . . .

The attorney general's letter in effect said the board didn't have the authority to do this, regardless of —

LAGE: To deny —

VAUX: To deny the plan. But he said that in the context of answering a question that I thought was different from the one I'd asked him.

LAGE: Was he also saying that the director didn't have the authority to deny the plan?

VAUX: Yes, sure, because the board hearing was supposed to be on the basis that the director had used to deny the plan.

The next interesting thing to emerge was that the legal justification that the appellant companies then presented to the board as their case for why the board should overrule the director was couched almost entirely in the language of the attorney general's opinion. I have no evidence one way or another, but I just couldn't escape the feeling that perhaps the attorneys for the companies might have seen a draft of the attorney general's letter before I saw it. And there'll be some follow-on to this subsequently.

The other interesting, highly entertaining aspect of the hearing was that the existence of the letter let me back off a moment. The unusual nature of this hearing process is indicated by the fact that the Attorney General's Office provides the attorney for the director, who is one party to the case opposite the companies, and the Attorney General's Office provides the legal counsel to the board that's sitting in the role of the judge. They are two different [assistant] attorney generals, but they come out of the same office and so presumably are guided by the same policy viewpoint.

In addition, in light of the attorney general's letter to me, the [assistant] attorney general presenting Lew Moran's case, as director, was precluded from giving him any legal defense whatsoever. The attorney general's letter already implied what the director had done was illegal.

LAGE: That's very interesting.

VAUX: So what happened was a fascinating thing. Usually in appeal hearings, the director will argue the forestry and substantive-fact aspects of the case, and the procedures that he followed, and the attorney general's deputy will provide the legal justification. Instead of that they turned it around, and the attorney general's representative gave the forestry and administrative aspect of it, and Lew Moran gave the legal defense. [laughter] Which is kind of an interesting way to handle the problem. It's too bad somebody didn't get Lew Moran's reaction to having to be his own lawyer on that occasion.

Those are just some of the backgrounds that some historian might be interested in someday, on that case.

LAGE: Did that letter from the attorney general affect how you went ahead and proceeded?

VAUX: I distributed copies of it to all members of the board, of course. For my own part, I decided to ignore it. Now, it obviously affected how the attorneys for the companies proceeded because they relied heavily on that.

LAGE: Was it then also a matter of public record? Were they referring to the letter to you at all, except for the fact that their arguments were couched in those terms?

VAUX: As soon as the letter was delivered to me, it became a matter of public record, so they had access to it at that point. The only thing that to me seemed a little bit extraordinary was that I still hadn't had time to read and digest the letter myself when they presented their case in terms that alluded to arguments and language used in the attorney general's letter. I couldn't exactly visualize them getting it in there in such depth within the time constraints that had limited me.

The upshot of it all was that it came to a vote, and the vote I think was much less close than most people expected. It was, in fact, on two of the plans a six-to-three vote, and on one of the plans a five-to-four vote to deny the plans. I was the one person who did not vote the same on all three of the plans, and I don't think anybody ever understood why that was. I think they probably thought I was confused, or else was trying to waffle in some strange way, and that wasn't the way I saw it at all.

But as I saw the gist of the case, it goes back to this intent language that we've talked about earlier today, where the board has to give due consideration to recreational values in comparison to timber values. Well, the timber values were clear, and there has been a lot of testimony on that. The recreational values, as I saw it, were potential, and they were potential in two senses.

One, what is the value of a national park in being? That's a very difficult thing to estimate in some sense, to say nothing of an addition to a national park. The other thing was, what was the potential that Congress was going to act to create an addition to the national park? At that time we didn't know that. We had a barrage of telegrams and letters from interested congressmen and senators who were supporting the park addition, but that was no guarantee that a park bill was going to come out.

So I felt what one had to balance, in terms of the Forest Practice Act and its intent language, was the potential recreational value added by the

park addition against the value loss of the timber, both looked at in a broad societal context. The difference in my vote was simply a reflection of a subjective assessment that two of these plans were in the area that Congress was very likely to include in the park, and the other one was considerably more remote and seemed to me was outside any area that Congress was likely to include in an expansion. So, in a specific evaluation comparison, the three plans were not identical. . . .

LAGE: Do you think that the decision that was made reflected a change in the board's point of view, the board's composition? Or a change in what was happening with Congress? Or was it not related to either one?

VAUX: I think it was related to all these things. The argument that "the board ought to do something" was greatly strengthened by the fact that the bills in Congress had progressed to the hearing stage, and had already in the case of one house, I think had a favorable subcommittee report on one or more of the bills. The process was moving ahead politically, and so the probability that the park would be enlarged in some way was much greater than it had been earlier on. . . .

Of course, once the board had denied those plans, and in effect, confirmed Lew Moran's decision to deny them, then the companies immediately took the board to court. The trial of that action was conducted in the superior court in Eureka.

There were two or three interesting sidelights on that. The trial itself, of course, is a matter of record. But all of the Humboldt County Superior Court judges disqualified themselves from hearing the case. So a judge from over in one of the valley counties, I've forgotten which one, Colusa County perhaps, came over and heard the case. We thought initially that he probably was not sympathetic to the legal grounds, but it turned out differently.

There were two other background matters that it may be of interest to mention. For the same reason that the attorney general couldn't carry the director's legal defense in the timber harvest plan appeal, the attorney general had to disqualify himself from defending the board in this legal suit. The governor authorized us to employ private counsel, and to provide the funds necessary to pay that counsel, which were very substantial.

We employed a firm in San Francisco, Lillick, McHose, and Charles which was a firm, as I recall it, primarily noted for its expertise in admiralty law and therefore in administrative law, and this was an administrative law matter. One of the problems that we had in acquiring counsel was that many of the leading San Francisco firms already had ties to the timber industry, and they begged off and properly would have disqualified themselves from representing the board because of their having important timber companies as their clients already.

We dealt with Lillick, McHose, and Charles, and Mr. Pesonen and Mr. Berry were very helpful in working with those attorneys and keeping me properly guided in dealing with the board's relationship with those attorneys. I went up to Eureka to attend the trial proceeding, not that there was anything at all for me to do there, but I thought somebody should go and show the flag and display the board's interest in the proceedings. . . .

As is now a matter of record, the trial went very well, and the judge's opinion sustained the board on all the charges that were raised. The Superior Court's finding came out in mid-summer; I can remember receiving the telegram in Scotland. By the time that came out, then there was a six-month period when appeal from that hearing could be taken. But by that time, the park bill had passed Congress and so any further appeal was moot. So that's where that thing stands legally. It was never really firmly resolved that the board was right, but it does have a Superior Court opinion in support of its position.<sup>3</sup>

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<sup>3</sup> Arcata Redwood Co. v. State Bd. of Forestry, No. 61910 (Cal. Super. Ct., Sept. 8, 1977).



*From the Oral History of*

## DAVID E. PESONEN

*Attorney and Activist for the Environment, 1962–1992*

Interviews conducted by Ann Lage in 1991 and 1992, Regional Oral History Office, The Bancroft Library, UC Berkeley.<sup>1</sup>

LAGE: We want to get into your career in forestry, the California State Board of Forestry and the Department of Forestry. Let's start with the state board. No, let's start before the state board. Had you been involved in any forestry issues before you were appointed to the board?

PESONEN: Not very much. I was involved with the state Board of Forestry back in the early sixties when I worked for [Executive Director David R.] Dave Brower at the Sierra Club. That was part of my unshaped responsibility

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<sup>1</sup> Presented here is a brief excerpt from David E. Pesonen, "Attorney and Activist for the Environment, 1962–1992: Opposing Nuclear Power at Bodega Bay and Point Arena, Managing California Forests and East Bay Regional Parks," an oral history conducted in 1991 and 1992 by Ann Lage, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1996. © 1996 by The Regents of the University of California.

The oral history excerpts in this "Environmental Law — Oral History" section are intended to provide personal commentaries on the topics discussed in the preceding Environmental Law "Articles" and "Book" sections. This excerpt relates to the article: Darren F. Speece. *From Corporatism to Citizen Oversight: The Legal Fight Over the California Redwoods, 1969–1999*, in this volume, 13 CAL. LEGAL HIST. 57 (2018).

that he gave me. My title was conservation editor, but I did all kinds of things, and one part of the job was to represent the club before the state Board of Forestry in the very early years, in my early years, anyway. And then after I went into law practice in 1969 I kind of kept an eye on it. I was asked by Henry Vaux to serve on a study committee of the American Association for the Advancement of Science [AAAS] on forest practices. That was probably around 1975 and we did a little report for AAAS. . . .

LAGE: How did the appointment come about to the state board?

PESONEN: Well, Hank Vaux was chairman by then, and I guess he consulted with [Secretary for Resources] Huey [Johnson]. There was an opening for a public member who would be acceptable to the environmental community. They knew who I was and whether Vaux planted the idea with Huey or whether Huey came up with it himself I don't know.

LAGE: Did you know Huey?

PESONEN: I knew Huey from his Trust for Public Land days. I just got offered the position. It was part time, and it sounded like something interesting. There were a lot of forestry issues involving the Redwood National Park that were in the press a lot. . . .

LAGE: Well, when you came on the board, your first meeting was highly focused on the redwood park issue [May 1977]. Do you remember much about that?

PESONEN: Well, the redwood park was the forestry environmental issue at that time. Congress had passed the Redwood [National] Park bill in 1968 but it was not an adequate park. The park covered Redwood Creek, but it only covered the narrow strip up the creek called the worm. On a map it just looked like a worm meandering up the creek. The surrounding watershed was vulnerable to continued logging. It was just plain that that park wouldn't amount to anything if the entire watershed didn't have some protection, whether incorporation in the park or limitations on logging different from the regular forest practice rules, which was under consideration by the Board of Forestry when I first got there.

And there was a bill in Congress to extend the park substantially. [Senator Alan] Al Cranston — I think it was Cranston — and [Representative Phillip] Phil Burton were carrying that bill. There was a lot of interest in it,

but it hadn't passed yet. In the meantime, Louisiana Pacific and Simpson [lumber companies] — I think those were the two principal companies, maybe Georgia-Pacific, too — had filed with the department very large timber harvest plans to log in that watershed. It was very clear that their strategy was to get as much timber out of there as they could before we got it condemned by the federal government for addition to the park. So the problem was to figure out a legally sound theory for holding up those timber harvest plans until Congress could act on the expansion of the park and fund it. It wasn't very clear in the law how we could do that.

LAGE: You had to go by the prescribed forest practice law?

PESONEN: Well, it wasn't very clear how the board had authority to deny a plan. I think the director [of the Department of Forestry] had denied the plans, the companies had appealed to the board — because you only considered these issues on appeals from the decisions of the director, as I understand it? Yes. The question was whether we could deny the companies' timber harvest plans. I think [Board of Forestry member Phillip S.] Phil Berry and I spun out a theory that was not complete hokum to deny the plans for some interim period because there had been actual action by Congress. The bill had passed one house; it just hadn't passed the other house, and that was enough, we thought, to fit into certain language in the rules that gave the board authority.

That was a big hearing; there were a lot of people there. . . . It gave me an opportunity to explain what we were doing, explain the limitations on what our power was. And I took that seriously. . . . But it was very clear that the administration and a majority of the board wanted to protect that watershed because we were quite sure that Congress was going to pass the measure pretty quickly and fund it. You know, you got the usual arguments from the industry that tens of thousands of jobs would be lost forever. You hear that all of the time from the industry. You are still hearing it. You still hear it in the ancient forests controversy. I think their economics is shaky, but even if they are not shaky, the jobs are temporary and the park is permanent. I was an acknowledged environmentalist, and I was put on the board with that in mind. I was a public member; I wouldn't say I had a constituency, but I certainly had a sympathy for what the Sierra Club and Save The Redwoods League and other people

wanted to do. So if, legally, we could do what we wanted to do, we would. If we couldn't do it legally, we wouldn't.

LAGE: You said there were a lot of people at the hearing, both sides? Were they on both sides?

PESONEN: It was a big hearing.

LAGE: Was it pretty intense?

PESONEN: It was lively. It wasn't angry.

LAGE: Somehow, I would envision a lot of anger at that point.

PESONEN: I don't remember it as being an angry meeting.

LAGE: How about on other issues among the board members? Was the cooperation among the board members good? It seems like there was a balance of people.

PESONEN: Well, it was, by the time I got on the board, dominated by Jerry Brown appointees, and I think the cooperation on the board was very good. I attribute that to Hank Vaux's style. Hank Vaux was a wonderful chairman, and he had a great skill at finding consensus among board members. He had a good, crafty sense of pace of how things were to be done, and of process. And he is a wise, thoughtful person and a very good leader. He was hard working, and I respected his abilities. I didn't always agree with him, but I never felt that he was unfair.

LAGE: He devoted a great deal of time to that, it seems.

PESONEN: Oh, he devoted an enormous amount of time to it. It was almost a full-time job for him.

LAGE: I interviewed him on the Board of Forestry so we talked about it quite a bit. He seemed very process-oriented, to be sure that process was just correct so it wouldn't be challenged later in courts and — was that something you discussed with him?

PESONEN: That's the way a lawyer thinks, too. But it's also the way a very skilled administrator thinks, and Hank was a skilled administrator. It's also the fairest way to do things. Process is an established set of agreements among people about how things ought to be done to assure that when the

result is reached, that everybody who has participated in it feels that the result was fairly reached even if they don't agree with the result. . . .

LAGE: Let's leave the board and go to the department. Now how did that appointment come about? Are you aware of how your name came up?

PESONEN: I don't know how that came about. I know that I had been thought of as director sometime earlier when Claire Dedrick was secretary for resources before Huey. Moran was thinking of retiring, or maybe Dedrick was thinking of replacing Moran. This was probably two years earlier. I think it was right about the time I got on the board. It might even have been before I got on the board.

LAGE: Were you aware of it at the time, that you were being considered?

PESONEN: Well, she called me up one day. I knew her. She had been with the Sierra Club Loma Prieta Chapter, and I had known her from the anti-nuclear days. . . .

LAGE: You mentioned — maybe it was in your résumé — that one of the things you did was getting industry acceptance of the Z'Berg-Nejedly Act.

PESONEN: Yes, I worked hard to — I should have said that earlier. One of my agendas was to reduce the level of adversarial feeling towards the Z'Berg-Nejedly Act, and I think I had some success at that. It was never complete.

LAGE: Where did the adversarial relationships come in?

PESONEN: If a timber harvest plan which had some opposition to it still met the law, I approved it. I was very careful to know that the industry knew that I was going to follow the law and I didn't have an environmentalist agenda. I was happy to see the law changed, and I would work to change the law, but if I couldn't change it, I was going to follow it. I also spent a lot of time, like anybody would, like a lobbyist, in effect. There was an open-door policy. The timber industry representatives could go in and make their pitch anytime they wanted, and I didn't treat them like enemies.

LAGE: Was that a difficult transition for you? I mean you kind of came from being seen as an activist, whether you saw yourself that way or not, to becoming an administrator.

PESONEN: That was not hard for me at all. . . .

LAGE: You didn't feel that you were expected to behave in a certain way by the environmental community?

PESONEN: Well, my reputation was pretty solid, number one. Number two, in those days the Department of Forestry was not the focus of a lot of the environmental controversies. The Z'Berg-Nejedly Act wasn't very old. We were still maturing. And I was determined to see that that process continued. Where there was going to be some serious resource damage and the timber harvest plan had a flaw in it, I'd turn it down.

LAGE: Did you feel like you made progress getting the timber industries to buy into it a little more?

PESONEN: I don't know. I really don't know. [Laughter] I know they'd rather not have the Z'Berg-Nejedly Forest Practices Act, and that's never going to change. They are in it for business, and it constrains their business. They are never going to get used to that.

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*From the Oral History of*

## BRUCE S. HOWARD

*Board Member, President, Councillor of Save The Redwoods League, 1963–2003*

Interviews conducted by Ann Lage in 2003, Regional Oral History Office, The Bancroft Library, UC Berkeley.<sup>1</sup>

LAGE: We were going to start today talking about the biggest, most public issue having to do with the redwoods, which has to do with Pacific Lumber, and you were reminded of a story. Start with that story.

HOWARD: I was reminded that before the takeover by [Charles] Hurwitz, Howard Jones, chairman of the board of Pacific Lumber invited John Dewitt and myself to lunch at the PU [Pacific Union] Club, and we had a very pleasant lunch. Then it was at that gathering that he told us that it was very possible that Hurwitz had the upper hand on this unfriendly takeover.

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<sup>1</sup> Presented here is a brief excerpt from Bruce S. Howard “Board Member, President, Councillor of Save The Redwoods League, 1963–2003,” an oral history conducted by Ann Lage in 2003, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2005. © 2005 by The Regents of the University of California.

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The whole thing would be very much different than it was before. So that was a blow, and we didn't understand. The interesting thing is that prior to that time, [it was] the largest company that we dealt with — the Save The Redwoods League dealt with — we bought the largest amount of acreage from the Pacific Lumber Company.

LAGE: You'd always had a very high opinion of the company, as I understand.

HOWARD: Oh very, and they were always very fair. We bought Pepperwood Grove, we bought the Fern Canyon. We bought a lot of the Prairie Creek from them. It was a very nice relationship. They were most cooperative and very helpful to us.

LAGE: That was Mr. Jones who was head of Pacific Lumber?

HOWARD: Yes, he was the chairman of the board.

LAGE: Did they feel that they had no choice? Could they have fought that takeover in some way?

HOWARD: I think by the time they realized what Hurwitz had done, preliminarily, it was too late. They just couldn't fight it by that time.

LAGE: And it was sort of early in that takeover phenomenon.

HOWARD: Oh, that's right. It was one of those early takeovers. That was a great blow. Just recently, this is 2003, Save The Redwoods League made its first purchase of any land that's owned by the Pacific Lumber Company, since Hurwitz took over.

LAGE: Oh, now I hadn't realized that.

HOWARD: Yes, we just bought a small parcel from them, over in the Grizzly Creek area. We could not meet step one with them. The man that we used to deal with in the early days, who then, under Hurwitz, became the president of their lumber operations.

LAGE: Was that John Campbell?

HOWARD: He was based in Scotia. He had to do what he was told.

LAGE: But he had been with Pacific Lumber previously.

HOWARD: He had been with Pacific Lumber previously. We couldn't get to base one with him. His superiors wouldn't let him go to base one.

LAGE: Would he ever let down his —

HOWARD: Yes. He and Katie Anderton — he's retired now — have had a very good relationship. I think, on several occasions, he let it be known that he couldn't get out fast enough, but I think he had to look out for himself, which one has to do in this life. Then he finally retired.

LAGE: I noticed in the minutes there seem to have been several attempts in the eighties, to buy, or at least to offer Pacific Lumber money for —

HOWARD: We were negotiating with them for Grizzly Creek, which is out Highway 36. We felt it was a very fair offer, in other words, the negotiations. We just could never get to the point where you get into serious negotiations. They just wouldn't allow it. They just wouldn't allow it.

LAGE: Did you ever deal above John Campbell, with Mr. Hurwitz, himself, or others?

HOWARD: No, no. We never were permitted to go beyond John Campbell. I don't think we really wanted to. [laughter]

LAGE: Did you get in on the negotiations personally?

HOWARD: I was in on some of the early negotiations, yes, with John. He's a nice guy, but his hands were tied. It was too bad because they had some wonderful properties that we wanted to participate in.

LAGE: The big brouhaha was over the Headwaters Forest. Did Save The Redwoods League play any kind of a —

HOWARD: The Save The Redwoods League played hands off in the background. We supported a lot of the parties that protested.

LAGE: Now tell me about that. How did you support the parties that protested?

HOWARD: We let it be known to them that however we could help, let us know. For the most part, we played a very quiet role in that. It's interesting to know that when you get into a negotiation, when they get into all kinds of negotiations, where the federal government and the state government are involved, where taxpayer money is involved, there seems to be no limit to how high they can go. We had had the Headwaters Forest appraised.

LAGE: How early on?

HOWARD: Oh, maybe three years before all this brouhaha came up. It was worth, according to the appraisal that we got, it was worth about a third of what the state and federal government paid. They just gave money away.

LAGE: But on the other hand, they not only bought the Headwaters, which was only three thousand acres, but also this fifty thousand additional acres.

HOWARD: The surrounding area, that's right. Our position in this was that we couldn't really do much. We decided that rather than make enemies out of everybody, we just kept quiet, for the most part.

LAGE: I saw several news reports that said the Save The Redwoods League has identified Headwaters Forest as a marginal forest. Is that correct?

HOWARD: Yeah, well, because it's so steep. It's a terribly steep terrain. John and I walked over it, and it's for a mountain goat. It's a beautiful stand of redwoods. On the other hand, it would not be very easy for a lot of the general public to negotiate to see the whole thing.

LAGE: It seems as you talk, that you were thinking about recreational use, and it became something much bigger. It became habitat preservation.

HOWARD: Oh, absolutely. It did. There's no question that it was an important acquisition, but it got out of hand. When we saw where the direction that the negotiations were going, the panic that everybody put behind it, and the price was going up and up, we said, "Back out, back away. Don't have anything to do with it."

LAGE: I think it was called sort of the last remaining virgin, or the biggest remaining virgin redwood stand.

HOWARD: I think that's absolutely true, although, I think in many cases it was exaggerated. I think that's where they get their leverage, that this is the last, and what are we going to do, and so forth.

LAGE: I'm going to shift this just a little bit. So many people got in on the [Headwaters Forest controversy] — the radical environmentalists, all the celebrities. What did you think of those more radical groups, like Earth First!?

HOWARD: We had a meeting in that general area, at the Women's Federation Grove. Oh, I know, we had our seventy-fifth birthday and party at the Founders' Grove, where it was rather interesting. We had planned on a

thousand people — there must have been three thousand there, because as we came into the park, out on the parking area across the bridge —

LAGE: Where was it at?

HOWARD: At the Founders' Grove.

LAGE: In relation to the Headwaters.

HOWARD: Well, this is further south. Headwaters is on Highway 36. This was at the Founders' Grove, but this was a big issue at that time. All the radical groups were there.

LAGE: They came to your party?

HOWARD: They came to our party. They were, for the most part, pretty polite. One lady couldn't keep quiet, and they quieted her down. As we drove in to park, the catering — the Eureka Inn was catering it. And he was just frantic, and was just roaring off to Eureka to get enough food to feed them, because he'd figured on a thousand. He did very well. He dug up extra food. It was a fun program and so forth. Then we walked over to the Women's Federation Grove, which is about a half a mile away. These radical groups sort of set up, not picket lines, but just harassing lines.

LAGE: Of the Save The Redwoods League?

HOWARD: Against the Save The Redwoods League.

LAGE: What were they wanting you to do?

HOWARD: Well, they wanted us to put in much more vocal position, in opposing the acquisition of the Headwaters Grove. We just didn't play a loud enough role for them.

LAGE: Do you remember when that seventy-fifth anniversary was?

HOWARD: Oh dear. It would have been probably around '94, '95?

LAGE: I see. That was after the Redwood Summer.

HOWARD: Right, the wild summer.

LAGE: Did you ever have any actual meetings of people from Earth First!, or, I guess the other organization was, EPIC?

HOWARD: No, we never had any official meetings with them, no.

LAGE: I know that they wanted you to endorse the Forest Forever Initiative.

HOWARD: The concept, yeah.

LAGE: That was 1990, also.

HOWARD: That was 1990.

LAGE: What was the league's thinking about that?

HOWARD: Well, it just seemed to me that I think we talked about it at the board meeting — maybe a couple board meetings. We decided that, hey, we've got our own policies. We've got our own mission. Why get involved with that? We just sort of pushed it to the side and politely told them we weren't interested.

LAGE: Another thing they seem to want you to do, [it seems] from the minutes, was not to negotiate with Pacific Lumber, over buying parcels.

HOWARD: Right, and that we would not accept. But it didn't do us much good because we didn't make any progress.

LAGE: [Laughter] big difference of that. It became really a federal, state, and environmentalist and Pacific Lumber Company negotiation — sounded tremendously complex.

HOWARD: It was.

LAGE: Did Save The Redwoods League get involved in any of that? Those machinations?

HOWARD: No, actually, we just sort of tippy-toed around the whole thing, keeping in close watch of what was going on, of course, but we just stayed on the outside fringes, and didn't really get terribly involved.

LAGE: That's great. What do you think about the outcome? Do you personally, or the redwoods league, embrace this idea of saving whole habitats?

HOWARD: I think any time, anybody can save redwoods, and set them aside and acquire them, that's the name of the game. That's the game we're in too. So, we certainly applauded that. Oh yeah.

LAGE: What about the spotted owl? You know, everything got mixed up in it — the marbled murrelet, and all that. Does that seem just like an excuse, or —

HOWARD: They were all just issues, and the panic of being the last of the redwoods and so forth all contributed to this higher and higher escalation of the price, which scared us to death.

LAGE: It came out to about five hundred million.

HOWARD: Oh, it's just incredible, just incredible. Well, anyway, the redwoods were saved.

LAGE: Right, seventy-five hundred acres of old growth, it sounds like.

HOWARD: Right, old growth.

LAGE: And a huge ecosystem. It's a very interesting —

HOWARD: It was a very interesting issue.

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*From the Oral History of*

## WILLIAM W. WOOD, JR.

*Program Director, Agricultural Economist,  
UC Riverside Cooperative Extension*

An interview conducted by Robin Li in 2008, Regional Oral History Office, The Bancroft Library, UC Berkeley.<sup>1</sup>

WOOD: In 1961, I started taking my classes at Berkeley and finished them in '63, took my exams in '63, started doing my dissertation. Visited with a lot of people, read a lot of material, prepared the document. I defended that actually in '65. In the meantime, in the spring of '64, Cooperative Extension of UC inquired as to whether I would be interested in going to Riverside for a new position that they were creating. . . .

LI: So could you tell me what your average day was like for you as a program director? Who would you be talking to, what kinds of things would you be doing?

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<sup>1</sup> Presented here is a brief excerpt from William Wood, "Taking the University to the People: University of California Cooperative Extension," an oral history conducted by Robin Li, Ph.D., 2008, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2009. © 2009 by The Regents of the University of California.

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WOOD: I would say that the typical day was — there'd be a short portion of that day devoted to talking to and working with colleagues on their programs. . . .

LI: And how many people would you be overseeing at a given time?

WOOD: Twenty-five.

LI: And they were all specialists with particular areas?

WOOD: Yes. And they'd be at one, two, three, four different locations, for the most part. Then at least half of every day was devoted to program. Keeping abreast of what's happening, and this would be, as the years progressed, starting in 1966, with the passage of the California Land Conservation Act, the Williamson Act, I started spending more and more time on land policy. And I'd say, when I retired, that was — between water and land, that took up — since the last two years, there was no longer a program director. So I was back to being a specialist, 75 percent of my time was devoted to that. At the beginning it was small. In the course of that, it was made up of three or four components. One was, with some colleagues, we tried to do research on what constitutes land conversion and changes in land use through research projects. Secondly, working with either legislative committees, or more particularly with the state agencies involved in agricultural land. Third, it involved working a great deal with farm advisors and county government. . . .

LI: So you were talking about your interest in land policy following 1964, the Williamson Act. Was there a specific project that you can think of that kind of encapsulated the issues you really thought were critical to —

WOOD: It's difficult to put it into a project context, but let me talk a little bit about the history and how it evolved. Because there have always been some major problems associated with land and water. But let's talk about land for a while, because California has spent more time looking at water than it has land, and it still hasn't resolved that. When Proposition 13 was passed by the voters of California, that made quite a big difference, but that wasn't passed until after the state had already adopted the Williamson Act. Now, the California Land Conservation Act, also known as the Williamson Act — the author's name was John Williamson; he was the assemblyman from Tulare County. I think he had been county assessor

before getting elected to the Assembly. And he brought together a group of people, and they developed what became the Williamson Act. It was important because up until that point, because there had been a number of scandals in assessor's offices in various counties around the state in the '50s, where preferential treatment was given to certain landowners. The state Constitution essentially said that the land shall be appraised on its market value. Well, subsequent to World War II the demand for land in this state soared. So you had people paying exorbitant prices, and part of it was the Internal Revenue Code about which I talked earlier. Part of it was just to get a piece of the area.

The ones having the most difficulty at that time were the cow-calf operators, the livestock people. Because technically they had thousands of acres, because the animal-unit-months on typical rangeland in California is not very high. As a result, it wasn't at all unusual to find someone in the cow-calf industry for whom annual property taxes exceeded gross revenue. So the big push was from them, but all farmers were facing the same problem. The Williamson Act came along, and it essentially said that if a landowner goes in a ten-year contract that's automatically renewed every year unless you take explicit action — now that's based on the principle that most of us forget to take explicit action. Therefore, it can work in perpetuity. That land would be assessed based upon the value of return on investment.

LI: Right, rather than on the square footage.

WOOD: Well, rather than on market value.

LI: Right, I see.

WOOD: See, if the market said somebody will pay \$5,000 an acre for this land, and if you capitalize what you're making on the crop, and it turns out to be \$1,200 an acre, up until that point, the assessor was supposed to tax it on the basis of five. The Williamson Act contract said you can't assess it for more than \$1,200. So that made a big difference. The difficulty is that it was sold on the basis of protecting prime land, that very best delta land, that's the most productive. But that's the land closest to cities, and that's the land where the owner says, "I'm going to capitalize; when it gets to ten I'll sell." Now, we're talking 1950s. The Williamson Act was adopted by more non-prime land than the prime growers, or landowners, because they had fewer

options. And it did not do a whole lot on that land that people like Charles Warren, who was the assemblyman from Wilshire District, L.A., was a big supporter of the Williamson Act. He wanted to save prime land, but this really had very little impact.

Now, there are some other factors involved that made it very difficult then, still make it difficult. Number one, all land-use policies, by and large, are the responsibility of city and county governments. And the state runs into difficulty every time it mandates what local governments shall do. Secondly, the amount of prime agricultural land, I mean really productive land, is not equal among counties. And so the question rises, what interest do people who reside in San Francisco have as far as land decisions made in Tulare County? The citizens of San Francisco say, we're very concerned, because that's our food supply. The people of Tulare County say, look, we have local autonomy; we're not going to let you dictate what we're going to do. So this constant conflict between local autonomy and statewide goals was not resolved then; it has never been resolved.

LI: So did you find yourself speaking a lot to county politicians and officials?

WOOD: I found myself speaking to numerous boards of supervisors, to citizens' groups, in urban settings, in very rural settings. And what came out of that is that the very simplistic idea of trying to keep our productive capacity for food is so complex, I coined a phrase, how comprehensive can planning go before it becomes incomprehensible? Because there are so many of these considerations. The source of most revenue at both city and county is property tax. So first of all you're dealing with their autonomy. Then you're dealing with their revenue source. And then you're saying that here in this nice, rural county, you're going to let those idiots in L.A. and San Jose and San Francisco dictate what we do. That has nothing to do with local autonomy. That has to do with the fact that those individuals who have a bucolic area would rather have an income. Those people who live in some parts of San Francisco would rather be able to go see a bucolic environment.

LI: So was the tension between developing land for other uses and —?

WOOD: It got to the point where that was the battleground.

LI: So it was like, shopping malls or orange groves?

WOOD: Yeah. And Riverside's a good example of things gone wrong. This had more navel oranges than any other place in the world when we moved down here in 1964, and a lot of them had been removed by then. They have a large area that's quote "reserved for navel oranges or agriculture" unquote. No. It's mostly development now. And the reason is very obvious. From the urbanite's perspective, we'd like to keep those orange groves, but we want the economic activity. We want employment, we want sales in our business, et cetera, which means we want more people. Where are you going to put them? Build houses. Where are you going to build houses? In the orange groves. From the producers' standpoint — and there are some producers who have stuck it out. But I know one grower, a large grower in this western Riverside area, who says his annual cost just of picking up trash that people throw under his groves runs way over a hundred dollars an acre.

LI: Wow. That's a new problem, I'm sure.

WOOD: That's right, let alone you can't use chemicals. The water rates are still differential for agriculture, but not as much as they used to be. Labor becomes a problem. Theft and vandalism becomes a major problem. So most of those growers said, bless you, if I can get more than my investment out, I'll go live somewhere else. The navel orange production now is predominantly in the San Joaquin Valley, where they've had equal problems, because they don't want to lose their opportunity for urban development. And if you look at Visalia, for example, one side is highly productive land. The other side is not very productive land; it's got hardpan. It's also not very good for putting up houses. [laughter] So what happens? The other problem, of course, is dairies out of Chino have moved up there. The most recent interesting conflict was between dairy operators and tree fruit growers in Tulare County over water quality. You can't win.

Anyway, the Williamson Act was voluntary. It was adopted by most counties but not all. Used by a few in conjunction with their county plan. Others used it just to keep the landowners quiet, which was not a particularly good way, because you ought to coordinate it, in terms of areas that you want to keep as agriculture. But that's never been a high priority for most county governments, certainly not for Riverside, and not for San Diego. It is, today, for Los Angeles, when it's too late. [laughter] So, there you have it.

The whole issue of land is then further compounded by the fact that our heritage is the family farm. And the family farm in California is your retirement account. And if you take away the value of that retirement account, what do you do? Now, that's not always the problem, but it's still a major part of it, that the way a lot of small farmers retire in California is by selling to someone who has ideas of development, at a price higher than what the capitalized value is from agricultural products. So all of these factors come together.

LI: Do you think this issue of land policy was particularly difficult for California Extension, versus other states, because of the population and the — ?

WOOD: I think it was more difficult in California for two or three reasons. Number one, the population pressures on California are much more severe than anybody except maybe Florida. Now, in Arizona, the pressures were on water, not on land. Secondly, the nature of our land resources, if you go to counties in the Corn Belt, there are variations, but most of the counties, most of their land is highly productive land for those kinds of crops. So the fact that County A decides to develop and County B wants to remain agricultural is not a statewide concern. It may be a concern of how much land we take out in total, but not in terms of those two counties. In California, if you take out Monterey County, or Fresno or Tulare County, you've taken out a good part of our productive capacity.

Now, there's one other aspect of this that I find fascinating, and it's fun to do it with a group. We produce far in excess of 250 commercial agricultural commodities in this state. And I'll meet with a group and say, included in that is probably thirty different vegetable crops, commercially grown. We don't need thirty different — nutritionally, we don't need that many choices. So let's start cutting down, and I always say, "Okay, now, first one to go is eggplant. Can you hear me, dear?" And in the group, I say, "How many are willing to give up eggplant?" And a few will raise their hands, and there's half of them who like eggplant. I don't happen to like eggplant. Pick another vegetable. I said, therein lies one of our major problems, in terms of planning the resources for agriculture. We could get by with a lot less land if we said, sorry, folks, no more consumer choice. You get one nut, one fruit, two vegetables, one green, one yellow [laughter] — it would be so much easier if I were the czar.

But that's not the nature of the beast. And to cater to consumer choice — it's interesting as a sideline, all of the attention now on energy consumption, the one thing that's going to begin to take its toll is our ability every day of the year to get any fresh fruit or vegetable we want. Those days are numbered. When gasoline or fuel gets up to ten dollars a gallon, you're going to stop getting fresh fruit from Chile in the winter. You'll stop getting fresh vegetables in the winter from Mexico. And it's consumer choice that has driven — the consumer choice in Iowa or Illinois is not an issue. You're going to raise corn and soybeans. What else do you do?

LI: And they import most of their food.

WOOD: Right. I never will forget, I was sitting in a meeting, and an assemblyman whose name I can't remember, or where he was from. He was an urban assemblyman. So the group made the observation in the same context. He said, "You don't need to save land for avocados. Let them grow them in the Dakotas where nobody wants to live." Which turned out to be a very good example, because you can just eliminate avocados from your diet. It wouldn't bother me particularly, but there's some people that it would be a major loss.

So the whole issue of land, and to a large extent water for agriculture, is compounded by all of these other variables in the policy process. There is the matter of, what level of government do you want to make decisions? How do you want to protect the grower who has his investment in there? How much choice do you want to give to consumers? If a county has a significant amount of prime land and no one else does, should they be required in perpetuity to be the food bank and not have the economic growth? In water, how short in food supply should we get before we cut off irrigation to agriculture, instead of shipping it to Los Angeles? These were all critical issues, and there really is no resolution. My definition of a public policy is where there's no best answer.

There may be a best answer for me, there may be for you. But anytime somebody comes along and says, on energy policy, here's the best answer, here's the solution to everything, wrong. I don't care what it is; it's wrong. And that's one of the things that's been hard to get across. And I would say, in summary of my quote "educational career" unquote in Cooperative Extension, in the area of land and water, it's been the effort to help make

people understand the complexity of issues and to avoid the single-valued solution. The good resolution of a public policy issue, at the local level, is where everybody is equally unhappy. And I think that's a good message to remember. Because if somebody's happy, then you better watch out. I think it sounds like a sermon as much as anything. See, a part of that time period I spent in educating our advisors on the public policy education process. That's where the political science and the agricultural economics came together very well. And I gave weeklong seminars for all of our county directors on public policy education, how you help your clientele without taking sides. Help them define what the issue is. Help them identify what the alternatives are. Help them identify the impacts of the alternatives. And then a political decision is what comes next, and you're not part of that.

LI: Right. You give them the tools for them to negotiate the political decision.

WOOD: That's right. And I'd have to say that looking back on thirty-some years in the university, the one thing about which I'm most proud is that Extension personnel got much more comfortable on sticky policy issues. And you can't avoid them if you're working with people day in and day out. I remember a state senator from Fresno, who shall remain unnamed. We were at a public meeting, and he came up to me afterward, and he said, "Bill, one of these days you're going to have to take a position." I said, "George, if I took a position against your pet project, how reliable would my analysis be in the future?" "Well, but you've got to take a position." I said, "No. My role is not to take positions. My role is to help people understand what their options are and make informed decisions. I don't have to agree with them." And it was a very good lesson.

One other quaint story. The most valued compliment I think I ever got is a fellow that I'd known for a long time. We had a seminar in Modesto, all day. At the end of the day, I'd given two presentations, and I'd chaired a discussion group. He came up and said, "Dr. Wood, I don't understand. I still don't know [where] you stand on this project. I couldn't get a glimmer of an idea." I said, "Thank you. That was my objective."