

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.¹

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

¹ 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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