

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.¹

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.

¹ 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 Miliias, 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 Miliias, 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].² That suit was brought originally by Andrea Mead

² *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 SO₂ [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.³

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

³ *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.⁴

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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⁴ 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.