



County of Santa Cruz

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December 17, 1998

Agenda: January 12, 1999

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

**Re: Eligibility of Persons for Appointment to Board of Directors of the
Pajaro Valley Water Management Agency (PVWMA)**

Dear Members of the Board:

This is in response to the Board's direction on November 24, 1998, to prepare a report regarding the process for opening membership on the Pajaro Valley Water Management Agency Board to any person who derives at least 51 percent of their net income from the production of agricultural products, including an agricultural worker, manager or owner of an agricultural product company, farmland owner, or farmer.

The qualifications for membership on the Board of Directors of the PVWMA is set forth in Water Code Appendix Section 124-402. Section 124-402 states:

"Sec. 402. The agency shall be governed by the board of directors. The board shall consist of seven members selected in accordance with this act. Each member of the board shall be a voter of and a resident within the agency. Four members of the board shall be elected as provided in Section 403. Three members of the board shall be appointed. The appointed members of the board shall reside within the jurisdiction of the appointing power, shall derive at least 51 percent of their net income from the production of agricultural products, as certified by affidavit, and shall be appointed by the following agencies: one member each by the Board of Supervisors

of Monterey County, the Board of Supervisors of Santa Cruz County, and the City of Watsonville. The appointments may be made from lists of not less than three nor more than five persons submitted to the appointing power for each vacancy by the Santa Cruz County Farm Bureau and the Monterey County Farm Bureau.”

The Board of Supervisors has traditionally appointed members from a list submitted by the Santa Cruz County Farm Bureau. The PVWMA statute only states that appointments “may” be made from such a list. “May” is a discretionary term so it is clear that the Board may, but need not, appoint eligible persons recommended by the Farm Bureau.

The PVWMA statute does not define the phrase or words “net income form the production of agricultural products.”

Case law indicates that statutory provisions regarding eligibility for elective or appointive offices are to be construed liberally in favor of eligibility. In the case of Lundgren v. Davis (1991) 234 Cal.App.3d 806, 83 1, the Court stated:

“The right to hold public office is considered fundamental under the state and federal Constitutions. (Citation) Accordingly, ‘[t]he exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office.’” (Citation)

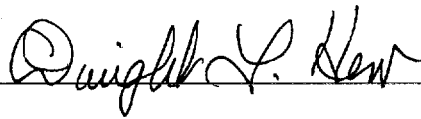
Since the language of the PVWMA statute, unlike some water management agency statutes, does not clearly restrict PVWMA board eligibility to farmers and/or farmland owners, the PVWMA statute’s existing wording should be interpreted in favor of eligibility for any person who derives at least 5 1 percent of their net income from the production of agricultural products, including any agricultural worker, manager or owner of an agricultural product company, farmland owner, or farmer. Since this interpretation

¹ cf. In some other water management agency statutes, eligibility for board positions is expressly restricted to owners of agricultural land and/or to persons involved in the business of raising animals or crops. (e.g. Surprise Valley Groundwater Basin Act, Chapter 137 of the Water Code Appendix.)

is different than the past practice of the Board of Supervisors, it would be appropriate for the Board to provide a special public notice regarding eligibility when the next vacancy occurs on the PVWMA board to be filled by the Board of Supervisors.

Very truly yours,

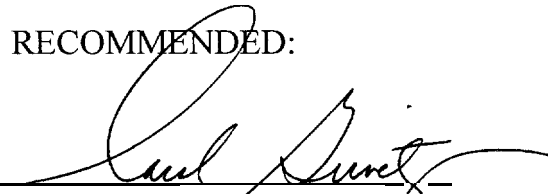
DWIGHT L. HERR, COUNTY COUNSEL



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cc: Charles McNeish, Pajaro Valley Water Management Agency

RECOMMENDED:


for SUSAN A. MAURIELLO
County Administrative Officer