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Lives Under the Canopy: Spotted Owls and Loggers in Western Forests

ABSTRACT

The Endangered Species Act of 1973 (ESA) was passed with bipartisan support as part of a broad environmental program during the 1960s and 1970s. The ESA sought to promote biodiversity and restore ecological balance to U.S. environments. But, as ancient forests disappeared in the American West, environmentalists began to use the ESA as a blunt instrument to save the wildlife of America's remaining forests. Their program included using the courts to save two owl species, the northern spotted owl in the Northwest and the Mexican spotted owl in the Southwest. The use of the ESA as a legal hammer severed traditional relationships between working-class people and the forests, and created a wedge between environmentalists and the working-class as environmentalists devalued human labor in the forests. In this article, two environmental historians have a conversation about the long-term implications of environmentalists' strategy of using the ESA to save western forests. They demonstrate that local people in the Pacific Northwest and New Mexico have long and complex histories of work in the forest that may not be inherently opposed to environmental goals. While the ESA is an important instrument in the environmentalist toolkit, in order to create a broad-based program which will protect forests in the long-term, working-class people must have a say in forest management.

I. INTRODUCTION

In 1993, a peculiar food hit the shelves of rural general stores from Roseburg, Oregon, to Reserve, New Mexico.¹ “Spotted Owl Helper” came with a “macaroni and fleas sauce mix.”² On the front panel a likeness of the “helping hand” character made famous by the Hamburger

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1. Gwen Florio, *Once-Bitter Enemies Begin Talking: Western Environmentalists, Ranchers And Rangers Find In Discussions That Sometimes They Even Agree*, PHILA. INQ., Aug. 31, 1997, http://articles.philly.com/1997-08-31/news/25567126_1_ranchers-logging-catron-county; 'Owl Helper' Doesn't Help, Critics Charge, THE REGISTER GUARD (Eugene, Or.), Feb. 19, 1993, at 2C.

2. Jamie Lewis, *Add One Northern Spotted Owl, Stir in Controversy, and Bring to a Boil*, FOREST HISTORY SOCIETY, PEELING BACK THE BARK (Mar. 7, 2009), <http://fhsarchives.wordpress.com/2009/03/07/add-one-northern-spotted-owl-bring-to-a-boil-and-stir/>. The Forest History Society holds the actual artifact in its archives in Durham, North Carolina.

Helper meal (but now wearing a lumber jack hat) stands next to a chainsaw that sits atop a tree stump.³ The fricassee style dish required only a “bird in hand,” some parsley, onion, a bird’s nest, and “sawce mix.”⁴ Regional variations on the dish included “Hoot-A-Toni,” “Preylines & Scream,” and “Egg McOwlette,” amongst others.⁵ The otherwise questionable gag gift also included the politically charged statement that “Spotted-Owl-habitat protection, alone, did not cause this situation. Allowing the species to become extinct will not resolve it. If we manage our forest resources for *the greater good of mankind*, the Spotted Owl need not worry.”⁶

Created by Gag Foods, and distributed by Callaghan Promotions, Spotted Owl Helper⁷ did not sit well with many people. General Mills sued Gag Foods for blatantly copying its popular Hamburger Helper meal.⁸ More importantly, both the timber industry and environmentalists felt the product trivialized a very real conflict.⁹ Diana Wales of the Umpqua Valley Audubon Society in Roseburg, Oregon, explained, “[w]e’ve got to keep our sense of humor, but a product like that only makes light of a serious economic and environmental issue.”¹⁰ Bob Ragon of Sun Studs, Inc., a Roseburg based lumber company, concurred.¹¹ He felt that “[e]ating spotted owls or even talking about eating them is not going to solve anything.”¹²

The reaction from both environmentalists and the timber industry attests to the contentious debate that surrounded the plans for protection of the northern spotted owl in the Pacific Northwest and the Mexican spotted owl in the American Southwest. As important, it reflected the mood of the early 1990s, when the Endangered Species Act of 1973 (ESA)¹³ had become one of the most litigated federal environmental laws of the post-World War II period.¹⁴ As we argue here, in the cases of the northern spotted owl and Mexican spotted owl (listed as “threatened”

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. ‘Owl Helper’ Doesn’t Help, Critics Charge, *supra* note 1.

8. ‘Owl Helper’ Doesn’t Help, Critics Charge, *supra* note 1.

9. ‘Owl Helper’ Doesn’t Help, Critics Charge, *supra* note 1.

10. ‘Owl Helper’ Doesn’t Help, Critics Charge, *supra* note 1.

11. ‘Owl Helper’ Doesn’t Help, Critics Charge, *supra* note 1.

12. ‘Owl Helper’ Doesn’t Help, Critics Charge, *supra* note 1.

13. 16 U.S.C. §§ 1531–44 (2006).

14. See generally STANFORD ENVTL. LAW SOC’Y, THE ENDANGERED SPECIES ACT 14–30 (2001).

under the ESA in 1990 and 1993, respectively),¹⁵ the strict implementation of the ESA through the courts undermined potential alliances between environmentalists and the working-class communities that historically relied on forests for work. Ironically, the ESA as used by environmental groups has disrupted traditional relationships between loggers and nature and has not led to the delisting of either species in the last 20-plus years.¹⁶

During the 1960s and 1970s, spurred by the environmental movement's complex set of goals (which included urban environmental justice, rural agricultural reform, and wilderness and endangered species protection), Americans joined the Sierra Club and other environmental organizations in greater numbers, everyday people began to take note of how pesticides and herbicides affected their diets, and Congress responded to calls for environmental protection.¹⁷ Alongside the National Environmental Policy Act of 1969 (NEPA),¹⁸ and the Wilderness Act of 1964,¹⁹ the ESA—which set out to identify threatened and endangered species and create programs to bring them back from the brink—is a highlight of the environmental movement during this period. In the

15. Determination of Threatened Status for the Northern Spotted Owl, 55 Fed. Reg. 26,114 (June 26, 1990) (codified at 50 C.F.R. § 17.11(h) (2011)); Final Rule to List the Mexican Spotted Owl as a Threatened Species, 58 Fed. Reg. 14,248 (Mar. 16, 1993) (codified at 50 C.F.R. § 17.11(h) (2010)).

16. Historical literature on the spotted owl crisis is still in its infancy. See Darren Speece, *From Corporatism to Citizen Oversight: The Legal Fight Over California Redwoods, 1970–1996*, 14 ENVTL. HIST. 705, 705–36 (2009); Thomas R. Wellock, *The Dickey Bird Scientists Take Charge: Science, Policy, and the Spotted Owl*, 15 ENVTL. HIST. 381, 381–414 (2010). A great deal was written during and immediately after these events from a variety of perspectives. See, e.g., WILLIAM DIETRICH, *THE FINAL FOREST: THE BATTLE FOR THE LAST GREAT TREES OF THE PACIFIC NORTHWEST* (1993); KATHIE DURBIN, *TREE HUGGERS: VICTORY, DEFEAT & RENEWAL IN THE NORTHWEST ANCIENT FOREST CAMPAIGN* (1996); DAVID HARRIS, *THE LAST STAND: THE WAR BETWEEN WALL STREET AND MAIN STREET OVER CALIFORNIA'S ANCIENT REDWOODS* (1995); ELLIOTT A. NORSE, *ANCIENT FORESTS OF THE PACIFIC NORTHWEST* (1989); DAVID SEIDEMAN, *SHOWDOWN AT OPAL CREEK: THE BATTLE FOR AMERICA'S LAST WILDERNESS* (1993); STEVEN LEWIS YAFFEE, *THE WISDOM OF THE SPOTTED OWL: POLICY LESSONS FOR A NEW CENTURY* (1994).

17. The rich literature on the modern environmental movement and the development of its legal basis includes: ROBERT GOTTLIEB, *FORCING THE SPRING: THE TRANSFORMATION OF THE AMERICAN ENVIRONMENTAL MOVEMENT* (rev. ed. 2005); SAMUEL HAYS, *BEAUTY, HEALTH, AND PERMANENCE: ENVIRONMENTAL POLITICS IN THE UNITED STATES, 1955–1985* (1987); HAL ROTHMAN, *SAVING THE PLANET: THE AMERICAN RESPONSE TO THE ENVIRONMENT IN THE TWENTIETH CENTURY* (2000); KIRKPATRICK SALE, *THE GREEN REVOLUTION: THE AMERICAN ENVIRONMENTAL MOVEMENT, 1962–1992* (1993); TED STEINBERG, *DOWN TO EARTH: NATURE'S ROLE IN AMERICAN HISTORY* (2nd ed. 2008); PHILIP SHABECOFF, *A FIERCE GREEN FIRE: THE AMERICAN ENVIRONMENTAL MOVEMENT* (rev. ed. 2003).

18. 42 U.S.C. §§ 4331–70 (2006).

19. 16 U.S.C. §§ 1131–36 (2006).

struggle to protect wild animals, environmentalists point to the success stories of the ESA in bringing species back from the brink of extinction.²⁰ In many cases, including the bald eagle and peregrine falcon, the ESA has worked as legislators hoped.²¹ The species received legal protection, recovered, and were eventually delisted.²² For environmentalists, the continued threat many species face affirms that the ESA remains necessary in promoting biodiversity.²³

But this tidy story often fails to account for the unintended consequences of the ESA and other environmental legislation. Environmental historians can offer more complex stories about environmental legislation that suggest how the contentious nature of such laws undermines the long-term goals of the movement.²⁴ By exploring the relationships between place, nature, and people in two different regions—in the context of the struggle over two related species of spotted owl—we suggest how changes in environmentalism created new ways of applying legislation that increasingly ignored the historical interactions of working-class people in nature.²⁵ In both the Pacific Northwest and the Southwest, working-class people had complex, historically situated relationships with nature that were not considered in the implementation of federal law. Moreover, while the ESA was written in Washington, D.C., and fought over in federal courts, these battles must be understood within the context of place and local work regimes to evaluate their successes and failures.

The ESA cannot be applied as a wholesale panacea. A priori assumptions that work in nature leads to environmental degradation have influenced how environmental organizations have pursued implement-

20. COMM. ON SCIENTIFIC ISSUES IN THE ENDANGERED SPECIES ACT, NAT'L RESEARCH COUNCIL, SCIENCE AND THE ENDANGERED SPECIES ACT 194–200 (1995).

21. STANFORD ENVTL. LAW SOC'Y, *supra* note 14.

22. COMM. ON SCIENTIFIC ISSUES IN THE ENDANGERED SPECIES ACT, *supra* note 20.

23. GOTTLIEB, *supra* note 17; HAYS, *supra* note 17; ROTHMAN, *supra* note 17; SALE, *supra* note 17; STEINBERG, *supra* note 17; SHABECOFF, *supra* note 17.

24. GOTTLIEB, *supra* note 17; Richard White, "Are You an Environmentalist or Do You Work for a Living?": *Work and Nature*, in UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE 171–85 (William Cronon ed., 1995).

25. See generally KARL BOYD BROOKS, BEFORE EARTH DAY: THE ORIGINS OF AMERICAN ENVIRONMENTAL LAW, 1945–1970 (2009); PAUL CHARLES MILAZZO, UNLIKELY ENVIRONMENTALISTS: CONGRESS AND CLEAN WATER, 1945–1972 (2006) (exploring the relationship between emerging environmentalism in the 1960s and water pollution control legislation); MICHAEL E. KRAFT, ENVIRONMENTAL POLICY AND POLITICS (2nd ed. 2007) (on the history of the relationship between environmental policy and politics); JAMES SALZMAN & BARTON H. THOMPSON, ENVIRONMENTAL LAW AND POLICY (Foundation Press, 2nd ed. 2007) (providing a broad overview of environmental law while also explaining major statutes and cases).

ing the groundbreaking legislation of the 1960s and 1970s.²⁶ As the historian Richard White noted in his influential 1995 essay, *Are You an Environmentalist or Do You Work for a Living?*, modern environmentalism has demonized most productive work in nature, ignoring the important fact that most people throughout history have known nature through work.²⁷

The work versus wilderness line of environmental thought has evolved with modern environmentalism.²⁸ Historically, environmentalists were not always just wilderness advocates.²⁹ A major theme in environmental history is how working-class people physically suffered the brunt of industrial pollution, leading to high disease and mortality rates.³⁰ In the 1960s and 1970s, a great deal of legislation helped shield both working-class bodies and the larger environment from the worst effects of industrial pollution.³¹ Events such as the publication of Rachel Carson's *Silent Spring* in 1962,³² the 1969 Cuyahoga River fire in Cleveland, Ohio,³³ and the Love Canal disaster near Niagara Falls in 1978 gal-

26. White, *supra* note 24.

27. White, *supra* note 24.

28. White, *supra* note 24.

29. *See generally* LINDA NASH, *INESCAPABLE ECOLOGIES: A HISTORY OF ENVIRONMENT, DISEASE, AND KNOWLEDGE* (2006) (discussing the environmental history of Central Valley, California, in the context of capitalist development and health); ANDREW HURLEY, *ENVIRONMENTAL INEQUALITIES: CLASS, RACE, AND INDUSTRIAL POLLUTION IN GARY, INDIANA, 1945–1980* (1995) (examining the roots of environmental inequality in contemporary urban America by focusing on the steel mill community of Gary, Ind.); ROBERT BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* (Westview Press, 3rd ed. 2000) (chronicling the efforts of five African American communities to link environmentalism with issues of social justice); CLAUDIA CLARK, *RADIUM GIRLS: WOMEN AND INDUSTRIAL HEALTH REFORM: 1910–1935* (1997) (discussing the history illnesses caused by exposure to radium by female dial painters during the early twentieth century.); ELLEN STROUD, *Troubled Waters in Ecotopia: Environmental Racism in Portland, Oregon* 74 *RADICAL HIST. REV.* 65, 65–95 (1999) (tracing the history of the environmental degregation of the Columbia Slough in Poland since World War Two, paying particular attention to the lower slough and to the neighborhoods that run along it).

30. *See* NASH, *supra* note 29; HURLEY, *supra* note 29; BULLARD, *supra* note 29; CLARK, *supra* note 29; STROUD, *supra* note 29.

31. *See* BULLARD, *supra* note 29.

32. *See generally* RACHEL CARSON, *SILENT SPRING* (Houghton Mifflin Co., 2002 ed., 1962) (discussing the environmental and human dangers of indiscriminate use of pesticides).

33. *See generally* David Stradling & Richard Stradling, *Perceptions of the Burning River: Deindustrialization and Cleveland's Cuyahoga River*, 13 *ENVTL. HIST.* 515, 518 (July 2008) (discussing why the 1969 burning of the Cuyahoga River became an iconic event of an environmental crisis).

vanized the nation's attention.³⁴ The major Clean Air Acts (1963 and 1970)³⁵ and Clean Water Acts (1960 and 1972),³⁶ the creation of the Environmental Protection Agency under NEPA in 1969,³⁷ and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980³⁸—which created Superfund to clean up toxic sites³⁹—, and other environmental legislation received bipartisan support and helped create a politically popular and seemingly inclusive environmentalism.⁴⁰ While reasons for supporting environmental legislation varied, liberals and conservatives, Democrats and Republicans, Lyndon Johnson and Richard Nixon all worked to pass environmental legislation.⁴¹ This period had far-reaching implications for addressing human health concerns, including: the fear of pesticides and their affect on human bodies and communities; air and water pollution; environmental injustice in inner cities; and irresponsible chemical dumping that caused cancer and birth defects.⁴² This period of environmentalism protected people from the ravages of unregulated industry, but usually refrained from demonizing the daily physical labor of workers.⁴³

By the late 1970s and 1980s, this earlier environmentalism gave way to a more contentious, legalistic movement. The ESA passed the Senate 92–0 and the House 390–12 before Richard Nixon signed it into law on December 28, 1973.⁴⁴ Yet, the law's implementation since the 1970s has hardly seen the same bipartisan support. The Sagebrush Rebellion—a property rights movement in the interior West in the late 1970s determined to oppose environmental restrictions on public lands—heralded a more organized opposition to environmentalism, while the Reagan Administration's hostility to the environmental movement closed

34. See generally ELIZABETH D. BLUM, *LOVE CANAL REVISITED: RACE, CLASS, AND GENDER IN ENVIRONMENTAL ACTIVISM 1* (2008) (examining the roles that race, class, and gender held in a community's fight to evacuate after a chemical leak in their town).

35. Clean Air Act of 1963, 42 U.S.C. §§ 7401–7671 (2006); Clean Air Act Extension of 1970, 42 U.S.C. §§ 7401–7671 (2006).

36. Clean Water Act of 1960, 33 U.S.C. §§1251–1387 (2006); Clean Water Act of 1972, 33 U.S.C. §§ 1251–1387 (2006).

37. 42 U.S.C. §§ 4331–70 (2006).

38. 42 U.S.C. §§ 9601–9675 (2006).

39. Hazardous Substance Superfund, 26 U.S.C. § 9507 (2006).

40. BROOKS, *supra* note 25, at 26; GOTTLIEB, *supra* note 17.

41. BROOKS, *supra* note 25, at 26; GOTTLIEB, *supra* note 17.

42. See generally NASH, *supra* note 29; HURLEY, *supra* note 29; BULLARD, *supra* note 29.2

43. See generally STROUD, *supra* note 29, at 65–95 (discussing environmental justice); HURLEY, *supra* note 29.

44. Endangered Species Act, 16 U.S.C. §§ 1531–1544 (2006).

the door on new laws and undermined regulation.⁴⁵ Given this growing attack on environmentalism, defending existing legislation in the courts was a logical response to protect the gains of the 1960s and 1970s.

The environmental movement also experienced a cultural change as it became increasingly dominated by younger activists who came of age in the 1960s. The counterculture profoundly altered the Pacific Northwest and desert Southwest as thousands of young people from around the nation moved to their idealized rural “ecotopia.”⁴⁶ They conceptualized the forests as spaces of play and spiritualism, not of the industrial labor of the modern timber industry.⁴⁷ In part this movement evolved through the lens of leisure where so long as one “left no trace” they could set up camp, hike up trails, and take in wilderness.⁴⁸ Work had a place in this new society, but only “primitive” or low-impact work such as non-industrial organic gardening endeavors.⁴⁹ These new residents saw the scars of clear-cutting, and it reminded them of what they loathed about the modern urban and suburban society that had encroached upon wild places.⁵⁰

The long-running counterculture in the West manifested itself in radical groups like Earth First!⁵¹ Direct action campaigns from radical

45. See generally R. CAWLEY MCGREGGOR, *FEDERAL LAND, WESTERN ANGER: THE SAGEBRUSH REBELLION AND ENVIRONMENTAL POLITICS* (1993) (discussing the Sagebrush Rebellion); RICHARD WHITE, *IT'S YOUR MISFORTUNE AND NONE OF MY OWN: A NEW HISTORY OF THE AMERICAN WEST 567-72* (1991) (arguing that succeeding groups have occupied the West and shaped the land while disregarding current inhabitants); JACQUELINE VAUGHN SWITZER, *GREEN BACKLASH: THE HISTORY AND POLITICS OF ENVIRONMENTAL BACKLASH IN THE U.S. 171-90* (1997) (tracing the history of contemporary opposition against the environmental movement to western opposition against federal resource policies, and identifying the changing role of the federal government's natural resource policy).

46. ERNEST CALLENBACH, *ECOTOPIA: THE NOTEBOOKS AND REPORTS OF WILLIAM WESTON* (1975) (presenting fictitious diary entries of a journalist investigating a future utopian country).

47. White, *supra* note 24, at 171-85

48. See generally James Morton Turner, *From Woodcraft to 'Leave No Trace': Wilderness, Consumerism, and Environmentalism in Twentieth-Century America*, 7 *ENVTL. HIST.* 462, 462-484 (2002) (discussing the parallel between the growth in wilderness recreation popularity and the “Leave No Trace” movement).

49. See generally Ryan H. Edgington, “*Be Receptive to the Good Earth*”: *Health, Nature, and Labor in Countercultural Back-to-the-Land Settlements*, 82 *AGRIC. HIST.* 279, 279-308 (2008) (discussing how the back-to-the-land belief in the connectivity between health, environmentalism, and a collective identity helped create a new form of consumer environmentalism).

50. DIETRICH, *supra* note 16, at 159-73.

51. See generally DEREK WALL, *EARTHFIRST! AND THE ANTI-ROADS MOVEMENT: RADICAL ENVIRONMENTALISM AND COMPARATIVE SOCIAL MOVEMENTS* (1999) (discussing the international anti-roads campaign of the 1990s); *EARTHFIRST!, THE EARTHFIRST! READER: TEN YEARS OF RADICAL ENVIRONMENTALISM* (John Davis ed., 1991) (presenting a compilation of articles

grassroots groups combined with a more aggressive legal agenda coming from mainstream organizations to close the forests off to the ravages of industrial logging.⁵²

But those forests had long histories of work and nature. Indeed, historians have largely accepted wilderness as constructed by city people seeking to find an antithesis to industrialization in large cities.⁵³ New Mexican land grant residents and Native Americans had traditions within the forest stretching back two centuries and more,⁵⁴ while Northwestern loggers had used the forest for both work and play since the mid-19th century.⁵⁵ Too many environmentalists completely disregarded the human side of the forests in their attempt to save the spotted owl and other species. Loggers in New Mexico and the Northwest had historically complex relationships with nature that changed over time and were mediated through the experience of work. Community discourses on work and life—as much as the yields called for by the timber industry—shaped what work in nature meant to everyday people in the two regions.

It is also important to understand that “work” does not just mean cutting timber for market. We understand forests as “energy systems,” where *both* humans and animals work.⁵⁶ Moreover, no matter how environmentalists might see it, Forest Service personnel, conservation biologists, hikers, and campers all work in nature.⁵⁷ And they all therefore humanize a place perceived by many environmentalists as pristine. Owls also work in nature. A nocturnal bird, they prey on a myriad of species depending on the ecosystem, including flying squirrels, woodrats, voles, gophers, mice, rabbits, a number of arthropods, birds, bats, and rep-

published in the *EarthFirst! Journal*); KATE COLEMAN, *THE SECRET WARS OF JUDI BARI: A CAR BOMB, THE FIGHT FOR THE REDWOODS, AND THE END OF EARTHFIRST!* (2005); RICHARD WIDICK, *TROUBLE IN THE FOREST: CALIFORNIA'S REDWOOD TIMBER WARS* (2009).

52. See generally Edgington, *supra* note 49, at 279–308; Turner, *supra* note 48, at 462–484; SUSAN ZAKIN, *COYOTES AND TOWN DOGS: EARTH FIRST! AND THE ENVIRONMENTAL MOVEMENT* (2002).

53. William Cronon, *The Trouble with Wilderness; or, Getting Back to the Wrong Nature, in UNCOMMON GROUND: RETHINKING THE HUMAN PLACE IN NATURE* 69, 69–90 (William Cronon ed., 1995).

54. See LOUIS WARREN, *THE HUNTER'S GAME: POACHERS AND CONSERVATIONISTS IN TWENTIETH-CENTURY AMERICA* 98–101 (1999).

55. Erik Loomis, *The Battle for the Body: Work and Environment in the Pacific Northwest Forests, 1840–1940* 52–60 (2008) (unpublished Ph.D. dissertation, University of New Mexico) (on file with Zimmerman Library, University of New Mexico).

56. See RICHARD WHITE, *THE ORGANIC MACHINE: THE REMAKING OF THE COLUMBIA RIVER* ix–x (1996) (explaining the “energy system” that the authors use here).

57. White, *supra* note 24.

tiles.⁵⁸ In the springtime, young owlets rely on their parents for survival, which means mature spotted owls must persistently search out food.⁵⁹ If traditional prey is deficient, owls must adapt or face starvation.⁶⁰ Moreover, Mexican spotted owls must avoid predation from great horned owls, red-tailed hawks, golden eagles, and northern goshawks.⁶¹ Northern spotted owls are infamously harassed by the barred owl, which is competing with spotted owls for territory due to shrinking habitat.⁶² They seek out nesting sites and use the forest to make homes.⁶³ For the owl, work is about survival. But for humans interested in sustainability there is also usefulness in the “energy system” of the forest.⁶⁴ When the act of human work is appreciated in the same light, the forest might be understood as a mosaic of biodiversity where environmentally enlightened human labor is both necessary and welcomed.

Through a conversation between two environmental historians, this article follows workers of the Pacific Northwest and Northern New Mexico in and out of the forest to make sense of how they understood their place in nature, and how the ESA has placed a wedge between work and environment. At the same time, this is a discussion of two very different landscapes with different cultures, economies, and environments; a discussion that encourages a rethinking of local work and knowledge in applying the ESA.

Almost 25 years ago, the environmental historian Arthur McEvoy argued that scholars needed a more “inclusive” way of thinking about communities, their labor, and the environments they live in. Indeed, historically speaking, ecology, economy, and culture (community) change in chorus.⁶⁵ Moreover, “to externalize any of the three elements, to place

58. WILLIAM M. BLOCK ET AL., U.S. FISH AND WILDLIFE SERV., RECOVERY PLAN FOR THE MEXICAN SPOTTED OWL (*STRIX OCCIDENTALIS LUCIDA*) 28 (1995), available at http://warnercnr.colostate.edu/~alanf/reprints/mso_rec_plan.pdf; See also James P. Ward, Jr., *Ecological Responses by Mexican Spotted Owls to Environmental Variation in the Sacramento Mountains, New Mexico* (2001) (unpublished Ph.D. dissertation, Colorado State University) (on file with Morgan Library, Colorado State University).

59. Ward, *supra* note 58, at 31.

60. Ward, *supra* note 58, at 31.

61. Ward, *supra* note 58, at 31.

62. U.S. FISH AND WILDLIFE SERV., FINAL RECOVERY PLAN FOR THE NORTHERN SPOTTED OWL (*STRIX OCCIDENTALIS CAURINA*) 47–49, 64–66 (2008), available at http://permanent.access.gpo.gov/LPS105516/LPS105516/ecos.fws.gov/docs/recovery_plan/NSO%20Final%20Rec%20Plan%20051408.pdf.

63. *Id.*

64. White, *supra* note 24.

65. Arthur F. McEvoy, *Toward an Interactive Theory of Nature and Culture: Ecology, Production, and Cognition in the California Fishing Industry*, in *THE ENDS OF THE EARTH: PERSPECTIVES ON MODERN ENVIRONMENTAL HISTORY* 216, 229 (Donald Worster ed., 1988).

it in a set of given, 'environmental' conditions within which one explains an ecological change, is to miss the crucial fact that human life and thought are embedded in each other and together in the nonhuman natural world."⁶⁶ To save the northern spotted owl and the Mexican spotted owl, working-class people of the West must understand the species as critical to their labor, their communities, and inevitably their own bodies. The ESA affords an opportunity to change minds through civil (rather than only legal) engagement. The health of the forest and the health of local people can evolve in tandem.⁶⁷

II. ERIK LOOMIS: LOGGERS AT WORK AND PLAY IN THE FORESTS OF THE PACIFIC NORTHWEST

When Europeans came to the forests of the northern Pacific in the eighteenth century, they had never seen anything like it.⁶⁸ The trees rose to heights sometimes surpassing three hundred feet.⁶⁹ The forest floor grew thick with underbrush that could easily disorient people. Wild animals, including grizzly bears and mountain lions, roamed the forest.⁷⁰ The early nineteenth century British explorer David Thompson gushed about the size of the trees and fecundity of the forests.⁷¹ In this passage chronicling an area near the mouth of the Columbia River, he described "the Forest of gigantic Trees . . . remarkable for the size of Pines and Cedars. . . . Close behind Astoria I measured a very tall Pine forty two feet girth: the Raspberry stalk measured eighteen to twenty one feet in height, and the size of a man's arm."⁷² After nearly two centuries of logging, only a small remnant of these old-growth forests remains.⁷³ These are the premier habitats of the northern spotted owl.⁷⁴ The high canopies afforded by older trees allow for good nesting sites and space for species dispersal.⁷⁵

The first white Americans to live in northwestern forests believed these gargantuan trees and thick undergrowth terrorizing, even if they

66. *Id.*

67. *Id.*

68. DAVID THOMPSON, DAVID THOMPSON'S NARRATIVE OF HIS EXPLORATION IN WESTERN AMERICA, 1784-1812 504-05 (1916).

69. *Id.*

70. George A. Savage, George A. Savage and Catherine Pulsipher Papers: George Savage Diary, 1880-1900 2-5 (1916-1920) (unpublished manuscript) (on file with University of Washington Libraries Special Collections).

71. THOMPSON, *supra* note 68, at 504-05.

72. THOMPSON, *supra* note 68, at 504-05.

73. ROBERT M. SCHOCH, CASE STUDIES IN ENVIRONMENTAL SCIENCE 94 (1996).

74. ELLIOTT NORSE, ANCIENT FORESTS OF THE PACIFIC NORTHWEST 78 (1990).

75. FINAL RECOVERY PLAN FOR THE NORTHERN SPOTTED OWL, *supra* note 62, at 50-54.

provided economic opportunity.⁷⁶ George Savage, who moved to northern Washington's Skagit Valley in the 1880s, wrote that the Northwest's forests were full of "vines in places so profuse that it was barely possible to even crawl through them."⁷⁷ One could walk over "creeping tendrils and stabbing spikes of brier and thorn over creeks and swamps where with torn clothes and bleeding hands" one eventually became "dazed bewildered or completely lost. all of this happened to most of us at one or another [*sic*]."⁷⁸

Early settlers feared the forest and sought to cut it back in order to build productive farms and get trees to market.⁷⁹ By 1900 however, forest workers, while needing to cut trees in order to feed their families, also showed great appreciation for the forest; their memoirs, letters, and reminiscences express marvel over the size of the trees, wildlife, mountain views, and flowers.

For example, in 1926, a man referring to himself as "Oldtimer" commented, "[w]hen a newcomer views the contrast between the beautiful, dignified forest around him and the devastated, uprooted, tortured, cut-over acreage, he receives a shock."⁸⁰ Oldtimer criticized the industry for the practice of clearcutting, arguing that it occurred because companies had no financial interest in saving any trees.⁸¹ He proposed instead that sawmills should have to own land, for they then would never cut timber they could not sell.⁸² In 1923, logger Charles E. Hunt wrote about why loggers loved trees.⁸³ He claimed that at heart, most loggers did that work because they wanted to live among the trees—"maybe no logger could put it exactly into words, but he stays at hard work in the forest because he loves trees. An effeminate admission, you say, to tell how you feel about it. That could all be true, but there you are."⁸⁴ Hunt went on to address himself to those who doubted that loggers loved trees—"what does a logger care for trees excepting what he may profit therefrom, you say? But he does care. Cares a lot. . . . The love is from all mankind. The trees level all ranks. They are brothers, one to another, and all for us."⁸⁵

76. Savage, *supra* note 70; ROBERT FICKEN, *THE FORESTED LAND: A HISTORY OF LUMBERING IN WESTERN WASHINGTON* 1–55 (1987).

77. Savage, *supra* note 70, at 2–5.

78. Savage, *supra* note 70, at 2–5.

79. Savage, *supra* note 70, at 2–5.

80. *The Prodigal Past*, *FOUR L LUMBER NEWS*, September 1926, at 16.

81. *Id.*

82. *Id.*

83. Charles E. Hunt, *Trees*, *FOUR L BULLETIN*, November 1923, at 52.

84. *Id.*

85. *Id.*

Logger unions also centered environmental critiques in their campaigns. The Industrial Workers of the World effectively organized loggers in the 1910s around the terrible working and living environments that sickened and often killed them.⁸⁶ Workers connected their bodies with the forest in which they worked, seeing the forests as healthful spaces that would create strong proletarian men if only the capitalist timber owners would not pollute their bodies with bad food, overcrowded and pestilent housing, and diseased workplaces. Strikes over these issues shut down the forests in the mid-1910s. Government intervention in World War I solved these problems of adulterated food, substandard housing, and a lack of sanitation.⁸⁷ Beginning in the mid-1930s, loggers began organizing in both American Federation of Labor (AFL) and Congress of Industrial Organizations (CIO)-affiliated unions. The CIO-affiliated International Woodworkers of America (IWA) vociferously attacked the timber industry's forestry practices beginning in the late 1930s, accusing it of undermining logging work for future generations and destroying the forest's beauty.⁸⁸ The IWA built alliances with nascent environmental organizations to lock up wilderness areas from the timber industry, including Oregon's Three Sisters Wilderness, which IWA president A.F. Hartung took a leadership role in protecting from logging in 1955.⁸⁹

While the relationship between labor unions and conservationist groups waned by the 1970s, loggers spent much of their leisure time in the forest.⁹⁰ Union publications ran outdoor columns, telling loggers' stories from their fishing, hiking, and hunting trips.⁹¹ All of these loggers relied on altering the forest to feed their families, but not all relied on old-growth timber. As early as the 1910s, large timber operators such as Weyerhaeuser and Georgia Pacific had huge private holdings that they farmed as plantations.⁹² No longer reliant upon old-growth timber or the national forests, their operations were little affected by the ESA.⁹³ On the other hand, small mills dotted the region. These mills often relied on

86. Loomis, *supra* note 55, at 120.

87. Loomis, *supra* note 55, at 120.

88. See *Chief Forester Warns of Wood Famine*, THE TIMBER WORKER, January 28, 1939, at 1, available at <http://depts.washington.edu/labhist/laborpress/TimberWorker.htm>.

89. KEVIN R. MARSH, DRAWING LINES IN THE FOREST: CREATING WILDERNESS AREAS IN THE PACIFIC NORTHWEST 28 (2007).

90. See, e.g., Fred Goetz, *About Open Spaces*, INT'L WOODWORKER, June 15, 1977, at 8.

91. *Id.*

92. RICHARD A. RAJALA, CLEARCUTTING THE PACIFIC RAIN FOREST: PRODUCTION, SCIENCE, AND REGULATION 169-89 (1999).

93. *Id.*

inexpensive old-growth timber from the national forests.⁹⁴ As undercapitalized local operations they most needed the continued exploitation of high-value virgin timber to survive.⁹⁵ Small-town operations, and the people depending upon them for survival, were the most vulnerable to an aggressive legal strategy for implementing the ESA.⁹⁶

In the Pacific Northwest especially, environmentalists used the ESA and other legislation as a solitary hammer rather than as one part of a larger toolbox. The ESA, the Sikes Act of 1974,⁹⁷ and the National Forest Management Act of 1976 (NFMA)⁹⁸ placed federal and state agencies in charge of maintaining wildlife populations and managing habitat to restore declining species.⁹⁹ Environmentalists wanted to save the last remaining lowland virgin forests from logging, and recognized an opportunity in this legislation.¹⁰⁰ The U.S. Forest Service (USFS) conducted decades of unsustainable overharvesting after World War II.¹⁰¹ By the 1980s, less than five percent of old-growth forest remained.¹⁰² With most of these remnants set for harvest by 2000, environmentalists engaged in a successful last-ditch effort to stop the logging.¹⁰³ Scientists considered the spotted owl an indicator species, meaning they used its numerical health as an indicator of the larger virgin forest ecosystem.¹⁰⁴ Using biological research, which showed declining numbers of the northern spotted owl, environmentalists took the USFS to court beginning in the mid-1980s to shut down most logging on federal land in order to protect the owl.¹⁰⁵

94. *Id.*

95. *Id.*

96. *Id.*

97. 16 U.S.C. §§ 670a–670o (2006).

98. 16 U.S.C. §§ 1600–1614 (2006).

99. SEIDEMAN, *supra* note 16, at 733.

100. DIETRICH, *supra* note 16, at 159–73. See BRIAN CZECH AND PAUL R. KRASUMAN, THE ENDANGERED SPECIES ACT: HISTORY, CONSERVATION BIOLOGY, AND PUBLIC POLICY 3–46 (2001); R. EDWARD GRUMBINE, GHOST BEARS: EXPLORING THE BIODIVERSITY CRISIS 101–09 (1992).

101. See generally PAUL HIRT, A CONSPIRACY OF OPTIMISM: MANAGEMENT OF THE NATIONAL FORESTS SINCE WORLD WAR TWO (1994); NANCY LANGSTON, FOREST DREAMS, FOREST NIGHTMARES: THE PARADOX OF OLD-GROWTH IN THE INLAND WEST (1995); SAMUEL HAYS, THE AMERICAN PEOPLE AND THE NATIONAL FORESTS: THE FIRST CENTURY OF THE U.S. FOREST SERVICE (2009); SAMUEL HAYS, WARS IN THE WOODS: THE RISE OF ECOLOGICAL FORESTRY IN AMERICA (2007).

102. *Id.*

103. See generally SEIDEMAN, *supra* note 16.

104. PAUL BANNICK & MARTYN STEWART, THE OWL AND THE WOODPECKER: ENCOUNTERS WITH NORTH AMERICA'S MOST ICONIC BIRDS 37 (2008).

105. DIETRICH, *supra* note 16, at 72–87.

While the ESA received the most attention at the time, the key legal battles revolved around NFMA.¹⁰⁶ NFMA reorganized forest management practices; among other things, it forced the USFS to manage for endangered species.¹⁰⁷ NFMA opened a door for environmentalists to allege that the USFS did not properly plan for managing species under their primary mission of facilitating timber company operations.¹⁰⁸ In 1987, the Sierra Club Legal Defense Fund (SCLDF) filed the first lawsuit to force federal land agencies to protect the northern spotted owl.¹⁰⁹ Attempting to comply with NFMA, the USFS issued its supplemental environmental impact statement on the spotted owl in 1988.¹¹⁰ The U.S. Fish and Wildlife Service listed the northern spotted owl as threatened under the ESA on June 26, 1990,¹¹¹ a decision affirmed in federal court in 1991.¹¹² In 1991, Judge William Dwyer ruled that the USFS had violated NFMA by not properly managing the spotted owl and ordered all logging on potential owl habitat closed until the USFS instituted a plan that would protect the bird.¹¹³

Bill Clinton's election in 1992 served as a major turning point in the conflict because of his environmentally friendly administration officials. Clinton's Forest Summit, held in 1993 in Portland, Oregon, allowed all sides to present their ideas.¹¹⁴ In July 1993, Clinton announced his Northwest Forest Plan, which limited logging on USFS lands to 1.2 billion board-feet per year and provided extensive reserves for the spotted owl and other endangered species.¹¹⁵ Judge Dwyer upheld Clinton's plan in 1994, ruling that it was in compliance with NFMA despite environ-

106. Brendan Swedlow, *Scientists, Judges, and Spotted Owls: Policymakers in the Pacific Northwest*, 13 DUKE ENVTL. L. & POL'Y F. 187, 191 (2003).

107. *See id.*

108. *Id.*

109. *Portland Audubon Soc. v. Lujan*, 884 F.2d 1233, 1234 (9th Cir. 1989).

110. See USFS, FINAL SUPPLEMENT TO THE ENVIRONMENTAL IMPACT STATEMENT FOR AN AMENDMENT TO THE PACIFIC NORTHWEST REGIONAL GUIDE—SUMMARY (1988). *See also* USFS, NORTHERN SPOTTED OWL: AMENDMENTS TO THE REGIONAL GUIDE FOR THE PACIFIC NORTHWEST REGION (1988).

111. Determination of Threatened Status for the Northern Spotted Owl, 55 Fed. Reg. 26114 (June 26, 1990) (to be codified at 50 C.F.R. pt. 17).

112. *Northern Spotted Owl v. Lujan*, 758 F. Supp. 621 (W.D. Wash. 1991).

113. *Seattle Audubon Soc. v. Evans*, 771 F. Supp. 1081 (W.D. Wash. 1991).

114. SEIDEMAN, *supra* note 16, at 8.

115. Melissa Healy & Paul Richter, *White House to Offer Plan to Limit Logging: Environment: Compromise Package to End War Over Spotted Owl is Expected Today. It May Anger Both Sides*, L.A. TIMES, July 1, 1993, http://articles.latimes.com/1993-07-01/news/mn-8820_1_spotted-owl; *see* REGIONAL ECOSYSTEM OFFICE, STANDARDS AND GUIDELINES FOR MANAGEMENT OF HABITAT FOR LATE-SUCCESSIONAL AND OLD-GROWTH FOREST RELATED SPECIES WITHIN THE RANGE OF THE NORTHERN SPOTTED OWL (1994), available at <http://www.reo.gov/library/reports/newsandga.pdf>.

mentalist complaints that the Northwest Forest Plan allowed too much timber harvesting.¹¹⁶ Logging on national forests plummeted. In 1988, loggers harvested 4.9 billion board-feet of timber in Oregon's federal forest land. By 2009, that number had fallen to 240 million board-feet.¹¹⁷ Clearly, these victories meant that taking the federal government to court made short-term sense for environmentalists.

However, this litigious strategy also undermined the potential to build alliances between working-class and environmental communities. In many ways, both groups desired the same thing—a healthy and productive forest. Some environmentalists expressed shock that loggers did not support their cause.¹¹⁸ They argued that converting from a timber to a tourist-based economy would provide both stable employment and protection for the forest at the same time.¹¹⁹ Major environmental organizations also took seriously the need to articulate realistic economic options for affected communities.¹²⁰ For example, Wilderness Society documents leading up to the 1988 Ancient Forest Conference laid out discussions of economic alternatives to logging communities.¹²¹ Brock Evans, vice president of the National Audubon Society, noted of the job issue, “something credible and coherent must be put together if we are to succeed in our first goal—the ancient forest system.”¹²²

Despite the historical relationship between loggers and the forest, and previous alliances between unions and environmental organizations, rapid changes to the timber industry made alliances between the two groups inherently difficult in the 1980s. New technologies that increased efficiency, shipment of raw logs to Japan, decreasing amounts of old-growth timber, environmental regulations, and the globalization of the timber industry had already led to significant job losses in the timber

116. Eric Pryne, *Clinton Forest Plan Upheld—Spotted-Owl Protection Sparked Dispute that Led to Today's Ruling*, SEATTLE TIMES, Dec. 21, 1994, <http://community.seattletimes.nwsource.com/archive/?date=19941221&slug=1948518>.

117. Eric Mortenson, *Make This Call in the Wild: Should Oregon Shoot Barred Owls to Save Spotted Owls?*, OREGONIAN, Feb. 5, 2011, http://www.oregonlive.com/environment/index.ssf/2011/02/make_this_call_in_the_wild_sho.html.

118. Memorandum from Brock Evans to Old-growth Activists 5 (Aug. 1, 1988) [hereinafter Evans Memorandum] (on file with University of Washington Libraries Special Collections).

119. *Id.* at 5–6; see also Memorandum, Wilderness Society—Northwest Region, Framework for Strategy 4 [hereinafter Framework] (on file with University of Washington Libraries Special Collections).

120. Framework, *supra* note 119; Evans Memorandum, *supra* note 118, at 5–6.

121. Framework, *supra* note 119, at 2, 4; Evans Memorandum, *supra* note 118, at 5–6.

122. Evans Memorandum, *supra* note 118, at 6.

industry by the late 1980s.¹²³ Loggers had difficulty pinpointing a single cause for their job losses until the aggressive environmentalism of the 1980s entered the picture.¹²⁴ The timber industry took advantage of this, using the environmentalists to cover up their own culpability in declining employment.¹²⁵

However, while some environmentalists genuinely cared for the loggers' fate, others expressed contempt for working-class people. In the minds of loggers, the symbol of this callousness was the notorious practice of tree spiking, in which activists drove metal spikes in to trees in order to destroy the equipment sawing into them.¹²⁶ While mainstream environmental organizations abhorred this practice, the more radical counterculture organizations such as Earth First! took a "by any means necessary" strategy to saving the forests.¹²⁷ In 1987, twenty-three-year-old mill worker George Alexander was nearly decapitated when the saw he worked in a Mendocino County, California, mill struck a spiked log.¹²⁸ Alexander survived, suffering a broken jaw, the loss of a dozen teeth, and a nearly severed jugular vein.¹²⁹ Earth First! leader Dave Foreman expressed little remorse over Alexander's fate, noting, "I think it's unfortunate that somebody got hurt, but you know I quite honestly am more concerned about old-growth forests, spotted owls and wolverines and salmon—and nobody is forcing people to cut those trees."¹³⁰

This contempt often extended to mainstream environmental organizations. When asked what he thought of the workers losing their jobs, former SCLDF lawyer Andy Stahl replied, "[t]hey were irrelevant."¹³¹ Stahl did not intentionally marginalize workers, but for SCLDF strategy, their fate was not a concern.¹³² Others found talking with labor pointless. Bonnie Phillips-Howard of the Western Ancient Forest Campaign dis-

123. STEVEN C. HACKETT & MICHAEL C. MOORE, ENVIRONMENTAL AND NATURAL RESOURCES ECONOMICS: THEORY, POLICY, AND THE SUSTAINABLE SOCIETY 12 (4th ed., 2011); William R. Freudenburg et al., *Forty Years of Spotted Owls? A Longitudinal Analysis of Logging Industry Job Losses*, in ENVIRONMENTAL SOCIOLOGY: FROM ANALYSIS TO ACTION 139, 139–55 (Leslie King & Deborah McCarthy eds., 2005).

124. HACKETT & MOORE, *supra* note 123; Freudenburg et al., *supra* note 123.

125. CARL SAFINA, SONG FOR THE BLUE OCEAN: ENCOUNTERS ALONG THE WORLD'S COASTS AND BENEATH THE SEAS 173 (1998).

126. See generally WIDICK, *supra* note 51.

127. See generally WIDICK, *supra* note 51.

128. JUDI BARI, TIMBER WARS 268 (1994).

129. *Id.*

130. *Id.*

131. Interview with Andy Stahl, Executive Director of Forest Service Employees, Environmental Ethics, via Skype (Mar. 29, 2011) (digital file on file with the Natural Resources Journal).

132. *Id.*

paraged 1992 conversations with labor about finding middle ground over the owl, noting, “[i]t has become painfully obvious to me how fruitless and indeed dangerous this path really is.”¹³³ Rather, Phillips-Howard suggested that “[g]etting excellent legislation passed in Washington, D.C., is where we need to focus our attention.”¹³⁴

Legal challenges to logging have a deeply mixed social and economic legacy. The timber industry predicted massive job losses in the Pacific Northwest, but this did not materialize on a regional level.¹³⁵ Industry officials projected up to 150,000 jobs lost.¹³⁶ The 1992 federal draft recovery plan estimated 31,016 jobs lost throughout the region due to protecting owl habitat.¹³⁷ But a 1999 report noted that old-growth protection only cost about 9,300 lost jobs.¹³⁸ The catastrophic effects predicted by the timber industry were unfounded as the continued growth of tourism, high technology, and other industries mitigated the job losses on a regional scale.¹³⁹ But many local economies still faced devastation. Towns like Oakridge, Oregon, 40 miles southeast of Eugene, have not recovered two decades after the fact.¹⁴⁰ According to a 2006 *New York Times* article, two-thirds of Oakridge children qualify for free or reduced lunch and over 20 percent of the town’s housing units are single-wide trailers.¹⁴¹ Many people commute into Eugene for low-wage jobs at Wal-Mart and other service industry employers.¹⁴² As Dan Rehwalt, a former machinist in the town’s lumber mill stated, “[t]here’s no substitute for having a payroll.”¹⁴³

Many people still try to make a living off the forest. Some work in the remaining logging operations. Some have turned toward tourism, from leading raft tours to running hotels and restaurants for those who come to play in the forest. Others use the forest as a cover for producing

133. Letter from Bonnie Phillips-Howard to Jean Durning, et al. (Apr. 17, 1992) (on file with University of Washington Libraries Special Collections).

134. *Id.*

135. Freudenberg et al., *supra* note 123, at 144.

136. *Owl Controversy Swirls*, ELLENSBURG DAILY RECORD (Wash.), Sept. 8, 1990, at 8.

137. U.S. FISH AND WILDLIFE SERV., DRAFT FINAL RECOVERY PLAN FOR THE NORTHERN SPOTTED OWL 546 (1992).

138. ERNIE NIEMI ET AL., THE SKY DID NOT FALL: THE PACIFIC NORTHWEST’S RESPONSE TO LOGGING REDUCTIONS 30 (1999), available at <http://pages.uoregon.edu/whitelaw/432/articles/SkyDidNotFallFull.pdf>.

139. *Id.* at 16, 30.

140. Erik Eckholm, *In Rural Oregon, These Are the Times That Try Working People’s Hopes*, N.Y. TIMES, Aug. 20, 2006, <http://query.nytimes.com/gst/fullpage.html?res=9804E2D7153EF933A1575BC0A9609C8B63&pagewanted=all>.

141. *Id.*

142. *Id.*

143. *Id.*

marijuana and crystal methamphetamine, which has led to a significant increase in crime.¹⁴⁴ In 2003, Sequoia National Forest Supervisor Art Gaffrey testified before Congress on this topic, noting, “[t]hese areas are also susceptible to increased risks of wildfire resulting from lab explosions or chemical reactions. Toxic chemicals used in these illicit laboratories may leech into soil and waterways, causing negative impacts to vegetation, wildlife, and drinking water.”¹⁴⁵ The Oregon Department of Justice has prepared an informational pamphlet for visitors to national forests on how to respond when stumbling across a site of drug production.¹⁴⁶ The lack of logging jobs may not have created long-term havoc throughout the Northwest’s economy, but it did limit opportunities for working-class people, thus stimulating markets for both production and consumption of illegal drugs which produce their own set of social and environmental problems.

Moreover, the long-term environmental legacy of using the ESA to protect ancient forests and save the spotted owl has not gone according to plan. By tying their legal challenges so specifically to one species, environmentalists not only fell victim to the charge that they valued owls over people, but they may have undermined their long-term basis for locking up the forest. Despite all the protections the ESA provides the northern spotted owl, this extremely sensitive species has continued to see its population plummet due to an invasion of barred owls from the Midwest.¹⁴⁷ Barred owls breed with spotted owls.¹⁴⁸ With numbers declining and the species possibly facing extinction, local politicians and business leaders are calling for the courts to reopen forests to logging.¹⁴⁹ Douglas County, Oregon, Commissioner Doug Robertson recently cited the barred owl invasion as evidence that the government should rescind protections of the northern spotted owl and open his county back up to federal timber harvesting.¹⁵⁰

While the changing demographics of the West Coast meant that these attitudes did not necessarily have statewide political ramifications,

144. *Drug Production on Public Lands—A Growing Problem: Joint Hearing Before the Subcomm. on Criminal Justice, Drug Policy, and Human Res. and the Subcomm. on Energy Policy, Natural Res. and Regulatory Affairs of the H. Comm. on Gov’t Reform*, 108th Cong. 24–26 (2003) (statement of Art Gaffrey, Forest Supervisor, Sequoia National Forest), available at <http://www.gpo.gov/fdsys/pkg/CHRG-108hhr93426/pdf/CHRG-108hhr93426.pdf>.

145. *Id.* at 34.

146. OREGON DEPARTMENT OF JUSTICE, *FORESTLAND RISK/RESOURCE GUIDE TO ILLEGAL DRUG ACTIVITY: MARIJUANA, CLANDESTINE LABS, & HALLUCINOGENIC MUSHROOMS* (2006), available at http://www.oregon.gov/OSP/FW/docs/Forest_Guide.pdf?ga=t.

147. Mortenson, *supra* note 117.

148. Mortenson, *supra* note 117.

149. Mortenson, *supra* note 117.

150. Mortenson, *supra* note 117.

it helped create long-term enemies of environmentalism. Loggers began viewing environmentalists as rivals rather than potential allies.¹⁵¹ Unions who had supported environmental efforts in the 1950s and 1960s attacked the new generation of environmentalists as uncaring outsiders who denigrated local culture and productive labor.¹⁵² Loggers took to sporting t-shirts and bumper stickers with slogans such as “Earth First! We’ll Log the Other Planets Later,” and “Save a Logger, Shoot an Owl.”¹⁵³

Perhaps the alienation of local work cultures and relationships with the forest was worth saving the Northwest’s last ancient forests, but the callousness of environmentalists contributed to the growth of entrenched opposition to environmentalism that did not exist among loggers before 1970. The American West, once home to environmentalist politicians of both political parties, including Republicans such as Oregon Governor Tom McCall, became the center of America’s partisan environmentalist debates. Anti-environmental resentment helped fuel the growth of new conservative western politics. Where once states like Idaho and Montana elected liberal, environmentally friendly Democrats like Frank Church (Idaho) and Mike Mansfield (Montana), anti-environmentalist politicians such as Larry Craig (Idaho) and Conrad Burns (Montana) rose to political prominence. While the timber industry was in decline for many reasons, the use of the ESA as a blunt tool to protect ancient forests helped create a West where bipartisan agreement on environmental protection has become nearly impossible.

III. RYAN EDGINGTON: FINDING MIDDLE GROUND IN NEW MEXICO

On March 22, 2011, Republican New Mexico State Representative Steve Pearce introduced his plan to revitalize the dormant timber industry in southern New Mexico.¹⁵⁴ He hoped that Congress would see fit to reconsider logging regulations in designated Mexican spotted owl sanctuaries in the Lincoln National Forest.¹⁵⁵ Like recent battles over the Mexican gray wolf recovery at White Sands Missile Range—and later in the

151. *Ruckus in Redwood*, INT’L WOODWORKER, Feb. 20, 1981, at 4.

152. Dick Spohn, *I Like Owls, But . . .*, INT’L WOODWORKER, Sept. 11, 1986, at 2.

153. JENNIFER SHERMAN, *THOSE WHO WORK, THOSE WHO DON’T: POVERTY, MORALITY, AND FAMILY IN RURAL AMERICA* 35–36 (2009); Thomas Allen Spies & Sally L. Duncan, *Searching for Old-growth*, in *OLD-GROWTH IN A NEW WORLD: A PACIFIC NORTHWEST ICON REEXAMINED* 7 (Thomas Allen Spies & Sally L. Duncan eds., Island Press 2009).

154. Rene Romo, *Pearce Takes Ax To Logging Restrictions*, ALBUQUERQUE J., Mar. 23, 2011, http://www.abqjournal.com/cgi-bin/print_it.pl?page=/news/state/23237416860newsstate03-23-11.htm.

155. *Id.*

Gila Wilderness—and the protection of the Cloudcroft checkered butterfly in the Sacramento Mountains, owls stand at the center of disputes over work and nature.¹⁵⁶ As Pearce explains it, “I just think we need some common sense solutions. We need to put people back to work. We need to protect the spotted owl, but we need to find a way to do so that does not kill a single American job.”¹⁵⁷

Environmentalists scoffed at Pearce’s plan. Todd Schulke of the Tucson, Arizona, based Center for Biological Diversity (CBD) believed that the “bill would sweep away decades of environmental protection, including the Endangered Species Act, as well as force the Mexican spotted owl into internment camps that Pearce calls sanctuaries.”¹⁵⁸ Pearce is “well known for his outrageous anti-environmental views,” explained Schulke, “but this stunt really takes the cake.”¹⁵⁹

At a time when national unemployment hovered at nine percent, and New Mexico’s near eight percent,¹⁶⁰ Pearce’s comments about jobs in forestry might make sense. Not unlike how Loomis frames conflicts in the Pacific Northwest, timber interests in the Southwest have recently pointed to a spotted owl species as the culprit in the recent decline of New Mexico’s lumber industry.¹⁶¹ There is good reason for this. In 1993, the Mexican spotted owl received threatened species status under the ESA just as hard times hit timber interests.¹⁶² Despite an increase in total lumber production—which peaked in 1989—U.S. Fish and Wildlife Service (USFWS) statistics show that between 1985 and 1995 the total wholesale value of timber for the entire Four Corners area hovered at a near constant \$200 million.¹⁶³ Data compiled by the Southwestern Regional Office of the USFS show that the region saw a decline from 434 million

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. Barton Eckert, *U.S. Unemployment Rate Ticks Down Slightly*, N. M. BUS. WEEKLY, Apr. 1, 2011, <http://www.bizjournals.com/albuquerque/news/2011/04/01/us-unemployment-rate-ticks-down-slightly.html>.

161. Jeff Barnard, *Timber Industry Expects Owl to Stay*, ALBUQUERQUE J., Nov. 16, 2004, <http://www.abqjournal.com/news/state/258832nm11-16-04.htm>.

162. Final Rule To List the Mexican Spotted Owl as a Threatened Species, 58 Fed. Reg. 14,248 (Mar. 16, 1993).

163. USFWS, FINAL ECONOMIC ANALYSIS OF CRITICAL HABITAT DESIGNATION FOR THE MEXICAN SPOTTED OWL 2-12 (2004) [hereinafter FINAL ECONOMIC ANALYSIS], available at http://www.fws.gov/southwest/es/Documents/R2ES/Mexican_Spotted_Owl_FINAL_Critical_Habitat_Economic_Analysis_8-19-04.pdf.

board-feet cut in 1989 to 159 million board-feet cut in 1993.¹⁶⁴ In 1960, New Mexico had 117 sawmills.¹⁶⁵ By 1997 there were only 22.¹⁶⁶ Between 1995 and 1997 timber harvests had reached a forty-year low.¹⁶⁷ More recently, the Western Wood Products Association noted that between 1998 and 2006 total forest production for the Four Corners region dropped by 48 percent.¹⁶⁸ Over the same period, the wholesale value of timber dropped from near \$109 million to \$58 million.¹⁶⁹ In a 2001 report on forestry related earnings in counties with critical habitat, the USFWS explained that those counties employed less than one percent of the state's total workforce.¹⁷⁰

The elusive owl did not alone create the decline in New Mexico's timber industry. While injunctions on lumber production in critical owl habitat offered one rationale, the USFWS pointed to changes in USFS harvest rules and the U.S. timber market at the national and regional level—a result of not just the ESA, but also NFMA.¹⁷¹ More than anything, the post-World War II generations saw in forests the antithesis to urban America, and they brought federal law to bear upon the timber industry.¹⁷² The talk of “jobs” versus owl “internment camps” masks a more fundamental question in employing the ESA in New Mexico. To read the conflict between Pearce and the CBD from a distance, one gets the impression that the Mexican spotted owl controversy is the age-old issue of big industry degrading wild nature. Yet the people who questioned the owl recovery program were less likely to fall into the categories of industry bigwigs or their lawyers. When one looks closer, the owl controversy has as much to do with New Mexicans whose work is tied to mountainous environments and the fecundity of their communities.

As employed by environmentalists, the ESA has lived up to its primary purpose of identifying endangered and threatened species. Environmentalists have used federal law to encourage the designation of

164. Carol Raish, *Environmentalism, the Forest Service, and the Hispano Communities of Northern New Mexico*, 13 SOC. & NAT. RES. 489, 499 (2000), available at http://www.fs.fed.us/rm/albuq/pubs/raish_2000.pdf.

165. THE BUREAU OF BUS. AND ECON. RESEARCH, THE UNIV. OF MONT., NEW MEXICO FOREST PRODUCTS INDUSTRY: A DESCRIPTIVE ANALYSIS 1997 10 (Charles E. Keegan III et al., eds., 2001), available at <http://www.bber.umt.edu/pubs/forest/fidacs/NM1997.pdf>.

166. *Id.*

167. *Id.* at 4.

168. WESTERN WOOD PRODUCTS ASSOC., 2006 STATISTICAL YEARBOOK OF THE WESTERN LUMBER INDUSTRY, 7–8 (2006).

169. *Id.* at 7–8.

170. FINAL ECONOMIC ANALYSIS, *supra* note 163, at 2-13.

171. FINAL ECONOMIC ANALYSIS, *supra* note 163, at 2-15, 2-16.

172. JAKE KOSEK, UNDERSTORIES: THE POLITICAL LIFE OF FORESTS IN NORTHERN NEW MEXICO 127–28 (2006).

critical habitat and have utilized the power of federal agencies to recuperate species on the brink of collapse in New Mexico and the Southwest. For example, the Mexican gray wolf, which lives on the New Mexico-Arizona border, has seen a growth from 11 wolves in 1998 to 58 wolves in 2012, a welcomed growth rate amongst biologists and conservationists.¹⁷³ At the same time, the law's usefulness in forcing land use change is a harbinger of the broader conflict between environmentalists and local communities. As one activist said of the ESA, "we're crazy to sit in trees when there's this incredible law that we can make people do whatever we want."¹⁷⁴ Such an approach, which the CBD accepted in shaping its mission,¹⁷⁵ hammers home one environmental ethos in the forest while pushing another to the margins. As environmentalists have argued that forest labor could only be of a particular preservationist ilk, the owl controversy obscured local knowledge about nature and denied deep-seated work in the forest. In turn, the conflict in New Mexico's wild spaces reached a fever pitch.

This is not to deny the important work of environmentalists or the need for the implementation of the ESA in New Mexico. Loomis and I agree that the work of environmentalists, and their role in implementing the ESA in the Pacific Northwest and American Southwest, has changed the conservation on western forests for the better.

The Mexican spotted owl's historical habitat, which has faced lumbering since the 1880s, ranges from the Four Corners area of the United States, through west Texas, and as far south as northern Mexico.¹⁷⁶ Of those tracked between 1991 and 1993, about 91 percent of the owls existed on lands administered by the USFS.¹⁷⁷ They also appeared in National Parks, on Tribal lands, and within Department of Defense sites.¹⁷⁸ Like its cousin from the Northwest, the Mexican spotted owl prefers mature or old-growth forests with closed canopies and shady canyons, the result of dispersal strategies and metabolic conditions that lend

173. Susan Montoya Bryan, *More Mexican Wolves in the Southwest*, ARIZ. DAILY STAR, Feb. 3, 2012, http://azstarnet.com/news/state-and-regional/more-mexican-wolves-in-southwest/article_e73780c0-4e91-11e1-bb77-0019bb2963f4.html.

174. J. Bishop Grewell, *War on Wildlife*, in GOVERNMENT VS. ENVIRONMENT 115 (Donald R. Leal & Roger E. Meiners eds., 2002).

175. *Id.*

176. BLOCK, *supra* note 58, at 20. See also Mark E. Seamans et al., *Demography of Two Mexican Spotted Owl Populations*, 13 CONSERVATION BIOLOGY 744, 744-754 (1999) (discussing population trends for spotted owls).

177. BLOCK, *supra* note 58, at 21.

178. BLOCK, *supra* note 58, at 21.

to cooler conditions for roosting and reproduction.¹⁷⁹ Without old-growth tree stands the species will likely perish.¹⁸⁰

The Mexican spotted owl is elusive. The USFWS speculated that between 1990 and 1993, when the species was listed as threatened, owls were viewed at 758 sites in the United States.¹⁸¹ In 1991, a status report for the USFWS estimated that about 2,160 Mexican spotted owls existed in the American Southwest.¹⁸² The team of authors who wrote the owl recovery plan modified those numbers to 1,516 based upon the notion that each site most likely had two owls, since the species lives in pairs.¹⁸³ However, the authors explained that those numbers still remained unreliable due to variable statistical analysis.¹⁸⁴ While those numbers may seem high, they were alarming enough for environmentalists to seek protection for the owl species under federal law.

These low population numbers also hint at the fact that most Americans have never seen a spotted owl. The invisibility of the owl clearly shaped how the USFS, environmentalists, and timber interests understood the species. For environmentalists, that invisibility was evidence of an unhealthy forest.¹⁸⁵ For the USFS, it raised questions about historical distribution of the species in forest ecosystems.¹⁸⁶ For those opposed to the program to recuperate the Mexican spotted owl, a lack of proof has made it hard to accept that recovering an obscure bird species will somehow make the forest healthier.¹⁸⁷

Conflict between local communities and conservationists in New Mexico is hardly new. The historian Louis Warren has shown that federal control over natural resources and wildlife occurred when federal forest management was in its infancy.¹⁸⁸ For example, the 1899 creation of the Gila Forest Reserve limited public access to the region's wildlife, grasses, and timber.¹⁸⁹ Yet, as Warren suggests, "locals continued to graze cattle, cut wood, and hunt as much as they had before, in such numbers that genuine federal management of resources proved difficult where it was not impossible."¹⁹⁰ Even though the USFS offered limited

179. BLOCK, *supra* note 58, at 26–27.

180. BLOCK, *supra* note 58, at 26–27.

181. BLOCK, *supra* note 58, at 10.

182. BLOCK, *supra* note 58, at 10.

183. BLOCK, *supra* note 58, at 10.

184. BLOCK, *supra* note 58, at 10.

185. George Johnson, *In New Mexico, an Order on Elusive Owl Leaves Residents Angry, and Cold*, N.Y. TIMES, Nov. 26, 1995, at A16.

186. *Id.*

187. *Id.*

188. WARREN, *supra* note 54, at 98–101.

189. WARREN, *supra* note 54, at 98–101.

190. WARREN, *supra* note 54, at 99.

access to offset poaching, Anglo, Hispano, and Indian residents of the area often ignored or circumscribed federal forestry policies that sought restriction on hunting and taking wood.¹⁹¹ As the railroad tied western forests to distant markets after 1880, the timber interests that came to New Mexico employed many locals.¹⁹² Yet residents of New Mexico had used forested lands to gather wood for heating homes and cooking food for generations.¹⁹³ As late as the 1930s and 1940s, residents of Truchas, New Mexico, continued to cut wood for personal use at harvest time and simply walked into the forest to fell a good Christmas tree.¹⁹⁴ While there is little doubt how large logging endeavors valued the forest, local peoples did not only see the forest through the eyes of the big timber companies they worked for.¹⁹⁵ The everyday lives of New Mexicans had always been, and often remained, bound to the mountainous landscapes that fed, warmed, and housed them.¹⁹⁶

Just as the battle over the northern spotted owl shaped debates in the Pacific Northwest, discussions about the future of the dwindling Mexican spotted owl population put timber workers on high alert. In April 1992, residents of Reserve, in Catron County, New Mexico, offered early opposition to recovery of the species in New Mexico.¹⁹⁷ A community that had relied heavily on the logging industry for jobs, Reserve's population had dropped from 440 to 300 residents over the course of the year—a 32 percent decline.¹⁹⁸ Rumors circulated that the local mill would close at year's end.¹⁹⁹ They believed environmentalists' plans to compel the designation of critical owl habitat in the area would further damage an economy already on the decline.²⁰⁰ Chamber of Commerce President Alan Robinson turned the notion of threatened species on its head when he explained that logging was a “way of life that's threatened.”²⁰¹ In Datil, an hour northeast of Reserve, a sign in the local convenience store

191. *Id.* at 98–101.

192. ROBERT HIXSON JULYAN, *THE MOUNTAINS OF NEW MEXICO* 81, 123 (2006).

193. KOSEK, *supra* note 172, at 124.

194. MYRTLE WALMSLEY, *I REMEMBER, I REMEMBER TRUCHAS THE WAY IT WAS* 18 (1981).

195. Johnson, *supra* note 185.

196. Johnson, *supra* note 185.

197. Richard Benk, *Mexican Spotted Owl Stirs Southwest Debate: Wildlife: New Mexico Loggers Fear U.S. Proposal to Protect Cousin of Northern Spotted Owl Will Cost Them Their Livelihood. Final Decision Is Due From Government in November*, L.A. TIMES, Apr. 26, 1992, http://articles.latimes.com/1992-04-26/local/me-1297_1_mexican-spotted-owl.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

read “we are out of paper products, wipe your ass on a spotted owl.”²⁰² Mill workers had also found 70 spikes in logs, which only exacerbated tensions between the working peoples of Reserve and environmentalists—notably, the use of spikes was publicly opposed by the Forest Guardians, a Santa Fe based environmental organization.²⁰³

The USFS also showed little support for research that supported listing the species as endangered. In May 1992, USFS officers cited Professor Peter Stacey of the University of Nevada–Reno for conducting research without a special use permit.²⁰⁴ Stacey, whose work focused on the dispersal of juvenile owls in the Gila, wrote to New Mexico Senator Jeff Bingaman that the research team’s removal from the forest was an “unprecedented attempt by the Forest Service to suppress independent biological research on the National Forests.”²⁰⁵ The Forest Guardians wrote a letter of support for Stacey that asked for Bingaman’s help.²⁰⁶ In March 1993, more than 22 conservation biologists and resource scientists joined Stacey in co-signing a letter to Vice President Albert Gore, Jr., that stated their fear that the USFS was “suppressing” scientific findings and altering some research so as to not disrupt timber quotas set by the agency and Congress.²⁰⁷ Moreover, the writers claimed the USFS had stopped studies that showed logging did harm to the forest.²⁰⁸

Plans to recover the Mexican spotted owl began in 1989 at the behest of Robin Silver—co-founder of the CBD and a key figure in owl recovery—who had circulated a petition that led to protection under the ESA.²⁰⁹ In turn, environmentalists, led by the CBD and the Forest Guardians, sought to establish critical habitat for the owl.²¹⁰ In a 1995 injunction,

202. Gwen Florio, *Once-Bitter Enemies Begin Talking*, PHILADELPHIA INQUIRER, Aug. 31, 1997, at A3.

203. Benk, *supra* note 197.

204. Keith Easthouse, *Forest Service Kicks Out Research Team*, SANTA FE NEW MEXICAN, June 5, 1992, at A1.

205. Letter from Peter Stacey, Professor at University of Nevada–Reno, to Jeff Bingaman, U.S. Senator (May 30, 1992) (on file with the University of New Mexico Center for Southwest Research); Letter from Sam Hitt, President of Forest Guardians, Santa Fe, to Jeff Bingaman, United States Senator (June 10, 1992) (on file with the University of New Mexico Center for Southwest Research).

206. See Hitt, *supra* note 205.

207. Letter from Arnold W. Bolle, Dean of the School of Forestry, University of Montana, et al., to Albert Gore Jr., Vice-President of the U.S. (Mar. 23, 1993) (on file with the University of New Mexico Center for Southwest Research).

208. *Embattled Owl Researcher Urging Gore to Scrutinize the Forest Service*, PRESCOTT COURIER, Mar. 25, 1993, at 7A.

209. *Forest Service Will Begin Study of Utah’s Spotted Owl*, DESERET NEWS (Salt Lake City, Utah), Mar. 27, 1990, <http://www.deseretnews.com/article/93837/FORREST-SERVICE-WILL-BEGIN-STUDY-OF-UTAHS-SPOTTED-OWL.html>.

210. *Environmentalists Sue Over Owl*, BULLETIN (Bend, Or.), Feb. 15, 1994, at C4.

environmentalists claimed large portions of USFS lands as vital to recovery efforts.²¹¹ Protests across Northern New Mexico followed.²¹² Unlike concerns in Reserve, the inability to take large, or even moderate, quantities of lumber to market did not characterize all opposition.²¹³ Instead, disagreements more often had to do with the simple *access* to resources that rural New Mexican communities had used for generations.²¹⁴ More often than not, “self-sufficiency” and subsistence typified the most vocal resistance to owl recovery designs.²¹⁵ This was particularly true in Northern New Mexico where communities had cut timber to heat homes, cook food, or to sell in small amounts around town.²¹⁶ Those communities recognized that the fate of their homes, their families, and their bodies was tied to the fortunes of a threatened species.

The people of Truchas—many with generational ties that stretch back to the early nineteenth century—²¹⁷ may at first seem at the margins of the debate over USFS lands. Yet, most locals relied in some way on the forest for wood; a fact that the Carson National Forest recognized.²¹⁸ Max Cordoba, who represented Truchas Land Grant holders, explained that if the environmentalists and the USFS could not work out their differences, people would simply poach wood.²¹⁹ He stated further that “the Forest Service and the environmentalists both sat down trying to decide what we need . . . they should have come and asked us. We’re stuck right in the middle. We really feel this is our land they’re talking about.”²²⁰

The Mexican spotted owl controversy in Northern New Mexico was part of longstanding tensions between the USFS, timber interests, and a Nuevo Mexicano community. The Truchas Land Grant, deeded by the Spanish crown and taken and resold by mostly American speculators in the aftermath of the Treaty of Guadalupe-Hidalgo,²²¹ fell within the National Forests of Northern New Mexico.²²² There is no denying that with the arrival of railroad lines in the 1880s, the areas around Truchas became intimately tied to the timber industry and that work in the forest

211. Johnson, *supra* note 185.

212. Johnson, *supra* note 185.

213. Keith Easthouse, *Owl Or Nothing: Who's at Fault in Habitat Hassling?*, DENVER POST, May 14, 1995, at C2.

214. Johnson, *supra* note 185.

215. Johnson, *supra* note 185.

216. KOSEK, *supra* note 172, at 99.

217. KOSEK, *supra* note 172, at 97.

218. Johnson, *supra* note 185.

219. Johnson, *supra* note 185.

220. Johnson, *supra* note 185.

221. KOSEK, *supra* note 172, at 99.

222. KOSEK, *supra* note 172, at 30–61.

shaped the community members' identities.²²³ Yet, they had also used the timber and wildlife resources of the forest for everyday living for generations before big timber came to New Mexico.²²⁴ As William Debuys noted of one community located eight miles northeast of Truchas, "in order to eke out a living the people of the Las Trampas Grant had to make full use of every available resource, and they had to cooperate with each other to do it. Only by sharing their goods and their labor could so isolated a people, possessing so few tools, manage to survive in as unforgiving an environment as the southern Sangres."²²⁵ Founded in 1751, Las Trampas had deep ties to the region's natural resources.²²⁶ The stories of Truchas and Las Trampas are not narratives of large timber destroying the forest.

In November 1995, residents of Truchas, on the edge of both the Carson and Santa Fe National Forests, were running out of timber.²²⁷ Under the 1995 injunction obtained by the Forest Guardians, which halted all timber production in the Carson National Forest, local residents were banned from taking dead and fallen wood from USFS lands.²²⁸ Restrictions on gathering wood came on the heels of a \$1.5 million study by the Carson National Forest that offered no indication of viable owl pairs.²²⁹ Forest personnel blamed owl proponents for the shift in land use.²³⁰ For residents of the Truchas area, the conflict between the USFS and the Forest Guardians shaped everyday decisions about making it through the winter.²³¹ Salomon Martinez told a reporter of his dwindling woodpile, "this will last me maybe two months . . . the National Forest has plenty of wood . . . they have left us out in the cold just to protect a bird that is not even good to eat."²³²

The political revolution of the 1960s, which saw increased community activism and organization, had inspired the more recent conflicts between the Truchas Land Grant, the USFS, and environmentalists.²³³ Those groups had vested but disparate understandings of the forest. While environmentalists attempted to purchase wood for the Truchas

223. KOSEK, *supra* note 172, at 30–61.

224. WILLIAM DEBUYS, ENCHANTMENT AND EXPLOITATION: THE LIFE AND HARD TIMES OF A NEW MEXICO MOUNTAIN RANGE 177, 189–192 (1985).

225. *Id.* at 177–178.

226. *Id.* at 171–193.

227. Johnson, *supra* note 185.

228. *Forest Guardians v. Thomas*, 967 F. Supp. 1536 (D. Ariz. 1997).

229. Johnson, *supra* note 185.

230. Johnson, *supra* note 185.

231. Johnson, *supra* note 185.

232. Johnson, *supra* note 185.

233. KOSEK, *supra* note 172, at 96–99.

community in the wake of the injunction (the anthropologist Jake Kosek noted one local called this program “welfare forestry”), most residents felt it was not enough to make it through the winter.²³⁴

The USFS also created “collaborative stewardship” programs that sought to promote the health of forests while also allowing for small amounts of community logging.²³⁵

While collaborative stewardship sought to engage local communities in conservation, the program also reaffirmed who was making decisions about work in nature. As Kosek notes, those programs “reassert the centrality of the Forest Service in the ‘proper’ governance of the ‘relationship between men and things’”²³⁶ The same could be said for the “welfare forestry” programs initiated by environmentalists. Moreover, the intersection between the work of owls and the work of local communities in forests was obscured by what environmentalists and USFS personnel deemed proper forest conservation.

The Forest Guardians used the ESA in Northern New Mexico to make the case that a healthy Mexican spotted owl population translated to a robust forest. Yet in the process they alienated an entire local community by not connecting the fate of the owl to the health of local communities.²³⁷ Moreover, the Land Grant conflict, which the Reies Tijerina-led Alianza Federal de Mercedes movement reignited during the 1960s, also revealed the racial animosity (and ultimately violence) that emerged throughout Northern New Mexico.²³⁸ The growth of an outsider, and largely Anglo, countercultural population (which in part brought young environmentalists to the area) further stoked the flame amongst residents in and around Taos and Santa Fe.²³⁹ Less than a year after the injunction that halted timber cutting in Northern New Mexico, anti-environmentalist activists burned Sam Hitt, then president of the Forest Guardians, and other environmentalists in effigy near the state capitol building in Santa Fe.²⁴⁰

In Catron County, where the community had a different relationship with the forest, residents had reacted negatively to the 1990 closure

234. KOSEK, *supra* note 172, at 96–97, 99.

235. KOSEK, *supra* note 172, at 98.

236. KOSEK, *supra* note 172, at 99.

237. *Id.* at 131; Editorial, *Hooting Up the Wrong Tree*, USA TODAY, Jan. 15, 1996, at A10.

238. See generally RUDY v. BUSTO, KING TIGER: THE RELIGIOUS VISION OF REIES LOPEZ TIJERINA (2005) (further discussing the Alianza Federal de Mercedes struggle).

239. For information on the counterculture and social conflict in Northern New Mexico see LOIS PALKEN-RUDNIK, UTOPIAN VISTAS: THE MABEL DODGE LUHAN HOUSE AND THE AMERICAN COUNTERCULTURE (1996).

240. KOSEK, *supra* note 172, at 131–132.

of a local mill and the loss of significant jobs that came with it.²⁴¹ In 1994, the County Commission passed a non-binding resolution encouraging every resident to carry a weapon.²⁴² Some residents asked local doctor Mark Unverzagt to X-ray packages for explosives.²⁴³ Fearing that the county would erupt in violence over the spotted owl (and Mexican Wolf) recovery plans, Unverzagt helped to negotiate the creation of the Catron County Citizens Group (Citizens Group), which brought ranchers together with loggers, environmentalists, and USFS personnel.²⁴⁴ By 1998, through careful and negotiated discourse, the Citizens Group negotiated a 125-acre forest-thinning project on the Reserve Ranger District of the Gila, which allowed for sale of timber from the project.²⁴⁵ The group also sought to create the aptly named “Wood Yard” clearinghouse for “skinny trees” that were then growing in meadowlands.²⁴⁶ The Citizens Group offered a way where both Reserve residents and owls could work in nature. The Citizens Group offered a first step towards undoing the polemic and flawed model that found human work on one end of the spectrum and that of the owls on the other. They recognized that many factions relied on the forest for survival and therefore had an interest in bridging the divide between forest conservation and forest work. A new mindset was in the making.

Conflict remained. The USFS approved a plan to prohibit cattle grazing in the area.²⁴⁷ The USFWS explained in the owl recovery plan that cattle herds place ecological pressure on riparian forest habitats, which offer “critical linkages,” or paths between forested mountain ranges.²⁴⁸ Those riparian environments promote spotted owl dispersal.²⁴⁹ In the wake of the decision, Citizens Group moderator Bob Moore explained that local ranchers felt “sold out.”²⁵⁰ Environmentalists and local communities did not always see eye to eye.²⁵¹ Yet all parties with ties to the forest sought a middle ground.²⁵²

In 2000, the USFWS proposed re-designating the critical habitat of the owl to include 21,000 square miles of Arizona, New Mexico, Utah,

241. Benk, *supra* note 197; Tony Davis, *Catron County's Politics Heat Up as It's Land Goes Bankrupt*, HIGH COUNTRY NEWS, June 24, 1996, <http://www.hcn.org/issues/62/1920>.

242. Benk, *supra* note 197.

243. Benk, *supra* note 197.

244. Benk, *supra* note 197.

245. Benk, *supra* note 197.

246. Benk, *supra* note 197.

247. Benk, *supra* note 197.

248. BLOCK, *supra* note 58, at 101–102.

249. BLOCK, *supra* note 58, at 101–102.

250. Benk, *supra* note 197.

251. Benk, *supra* note 197.

252. Benk, *supra* note 197.

and Colorado, a substantially larger swath of land than the original 7,500 square miles proposed under the 1995 Mexican spotted owl recovery plan.²⁵³ By August, the USFWS proposed an allocation of 13.5 million acres of critical habitat for the species across the Four Corners area, which would ultimately impact grazing on public lands.²⁵⁴ Within the first two months of the Bush presidency, the USFWS set the critical habitat at 4.6 million acres.²⁵⁵ As one environmental activist noted, “this looks like critical habitat for the timber industry, not the owl.”²⁵⁶ In 2003, a lawsuit brought by the CBD, the Sierra Club, and other environmental organizations in federal court compelled the Secretary of the Interior, Gale Norton, to designate critical habitat for the owl after the USFS removed lands proposed for recovery by the USFWS in 1995.²⁵⁷ Under the new ruling, the owl habitat included 8.65 million acres.²⁵⁸ In February 2011, the Supreme Court refused to intervene in continued struggles over the total land included in the habitat designation, leaving the area set at 8.6 million acres.²⁵⁹ Only time will tell how Northern New Mexico’s mountain communities will fit into future plans to protect the Mexican spotted owl.²⁶⁰

IV. CONCLUSION: IN THE AFTERMATH OF OWLS

New Mexico State Representative Steve Pearce sees his recent initiative to reintroduce timber cutting to Lincoln National Forest as not only a job creating venture, but also as a vital environmental move.²⁶¹ In particular, overgrowth has made the Lincoln National Forest an inferno

253. *Government Proposes Expanding Habitat of Mexican Spotted Owl*, L.A. TIMES, July 22, 2000, <http://articles.latimes.com/2000/jul/22/news/mn-57460>.

254. *Owls, Cows Clash Under Habitat Plan*, DENVER POST, Aug. 8, 2000, at B1.

255. Donna Kemp Spangler, *Owl Habitat Designation Angers Some Utahns*, DESERET NEWS (Salt Lake City, Utah), Jan. 21, 2001, at B6.

256. Theo Stein, *4.6 Million Acres For Spotted Owl, Conservationists Criticize Plan*, DENVER POST, Jan. 20, 2001, at B4.

257. Press Release, Center For Biological Diversity, *Federal Judge Refuses To Withdraw Order to Protect Mexican Spotted Owl Habitat; Orders “Immediate and Expedited” Compliance* (Oct. 13, 2003), available at http://vviiviv.biologicaldiversity.org/news/press_releases/mso10-13-03.html.

258. *Center for Biological Diversity v. Norton*, 304 F. Supp. 2d 1174 (D. Ariz. 2003).

259. Lawrence Hurley, *Supreme Court Decides Against Intervening in ‘Critical Habitat’ Designations*, N.Y. TIMES, Feb. 22, 2011, <http://www.nytimes.com/gwire/2011/02/22/22/greenwire-supreme-court-decides-against-intervening-in-c-36861.html>.

260. *Id.*

261. *Pearce Pushes for Environmental Job Creation*, CIBOLA BEACON (Grants, N.M.), Mar. 29, 2011, <http://www.cibolabeacon.com/articles/2011/03/29/news/doc4d913cae3eb44123110621.txt>.

waiting to happen.²⁶² Pearce argued that the proposal might not only create as many as one thousand jobs, but would also act as a vital effort to thin the forest.²⁶³ Yet, many environmentalists believe his plan would open the forests to large timber cutting schemes behind the façade of conservation.²⁶⁴

Ronny Rardin, Otero County Commission Chair, who accompanied Pearce on a tour of the area, claimed that the forest's dense vegetation had made it impossible for the owl to fly into the forest or to nest.²⁶⁵ In fact, spotted owls moved to the Mescalero Apache Reservation, where the tribe's forestry practices allowed the bird to prosper.²⁶⁶ The CBD disagrees; explaining that opening the forest to logging would act as a Pandora's box.²⁶⁷ Schulke believes "the whole thing is kind of crazy, it's crazy to say you're trying to find middle ground by eliminating all environmental laws having to do with logging, one of the most controversial public lands issues in the West."²⁶⁸ The CBD prefers utilization of smaller forest restoration projects to generate jobs.²⁶⁹ Whether those jobs lead to a living wage is hard to tell.

The polemic mindset that has come out of the Lincoln National Forest debate is, of course, nothing new. For the past 30 years, environmentalists have been at odds with westerners committed to an extractive economy. Conservative western politicians, such as Idaho Senator Larry Craig, increasingly sought to reopen the forests to large-scale commercial logging.²⁷⁰ While President Clinton alienated some westerners by unilaterally creating new national monuments, such as the Agua Fria National Monument in Arizona, and crafting a legacy as an environmental president, the 2000 election of George W. Bush created a new climate for resource exploitation.²⁷¹ Bush administration officials certainly supported reopening the forests, but could not undo the key court decisions of the

262. *Id.*

263. *Id.*

264. *Id.*

265. Eddie Farrell, *Pearce: Forest Can Be Economic Engine*, RUIDOSO FREE PRESS, Mar. 22, 2011, http://ruidosofreepress.com/view/full_story/12455282/article-Pearce—Forest-can-be-economic-engine—?instance=topstory.

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. See Larry Craig, *Forest Plan is Flawed*, USA TODAY, Apr. 21, 1994, at 12A.

271. DOUGLAS BEVINGTON, *THE REBIRTH OF ENVIRONMENTALISM: GRASSROOTS ACTIVISM FROM THE SPOTTED OWL TO THE POLAR BEAR* 150–160 (2009).

spotted owl crisis.²⁷² Working class loggers found themselves somewhere in the middle.

Bush's main tool for spurring logging on national forest land was the Healthy Forests Initiative (HFI).²⁷³ Officially enacted as the Healthy Forests Restoration Act of 2003,²⁷⁴ the HFI included thinning proposals (a program similar to Pearce's recent proposal for southern New Mexico forests).²⁷⁵ Using the specter of the large western fires of the early 2000s—such as the Cerro Grande fire near Los Alamos, New Mexico—the HFI looked to decrease fire danger in part by increasing logging.²⁷⁶ HFI became the next phase of the argument on both sides of the spotted owl debate.²⁷⁷ Environmentalists heavily criticized the HFI as a backdoor to commercial logging, noting that while small trees and brush created the fire threat, forest officials claimed that big trees would need logging to make the thinning operations economically viable.²⁷⁸ Lacey Philabaum, former editor of *EarthFirst! Journal*, attacked Bush's HFI announcement on Oregon's Metolius River, noting the USFS was moving ahead with selling burned timber without a draft environmental review and calling it "an illegal rush."²⁷⁹ Logging leaders praised it as an economic necessity for local communities as mills and logging operations would reopen.²⁸⁰ Associated Logging Contractors, an Idaho industry group, described HFI as "a common sense approach to management of our nation's precious forests."²⁸¹

Timber industry executives marshaled an environmental argument to reinforce the need for the HFI.²⁸² Certainly, many of our forests seem unhealthy due to fire suppression tactics, and Pearce's doctrine is a

272. *Healthy Forests: An Initiative for Wildfire Prevention and Stronger Communities*, WHITE HOUSE ARCHIVES, <http://georgewbush-whitehouse.archives.gov/infocus/healthyforests> (last visited Feb. 18, 2012).

273. *Id.*; John Fleck, *Driest Season Recorded Stokes Fire Conditions*, ALBUQUERQUE J., July 3, 2011, at A1.

274. 117 U.S.C. §§ 1887–1915 (2006).

275. *Id.*

276. *Id.*

277. Scott Maben, *Forest Wars, Part 2.*, REGISTER-GUARD (Eugene, Or.), Oct. 6, 2002, http://goliath.ecnext.com/coms2/gi_0199-2111800/Forest-wars-Part-2-Environment.html.

278. Lacey Phillabaum, *Bush's Holy War in the Forests*, COUNTERPUNCH, Aug. 27, 2003, <http://www.counterpunch.org/phillabaum08272003.html>.

279. *Id.*

280. *Facts About Idaho Loggers and Idaho Forests*, ASSOC. LOGGING CONTRACTORS, INC., http://www.idahologgers.com/idaho_loggers.html (last visited Feb. 18, 2012).

281. *Id.*

282. *Id.*

testament to this line of thinking.²⁸³ Yet, contrary to what many industry advocates say, environmentalists are not to blame for this. Rather, a century of fire suppression to serve USFS and timber industry interests has created overgrown forests with a great deal of fuel for large crown fires that are far more destructive than traditional fires. Indeed, experts blamed the June 2011 Las Conchas fire not on environmentalists, but instead on long-term forest management and the effects of global warming.²⁸⁴ But environmentalists' often antagonistic attitude toward labor and indifference to coalition building made them vulnerable to the (sometimes faux) environmental arguments used against them. The Bush Administration couched the need for the HFI in environmentalist terms on the White House website, noting concerns about air quality and animal habitat.²⁸⁵

David Bischel, president of the California Forestry Association, made a similar argument in a 2003 *San Francisco Chronicle* editorial.²⁸⁶ Bischel noted that the HFI was a necessity not only on an economic front, but also from an environmental perspective, noting, "animals perish and lose critical habitat when fires ravage landscapes. Smoke does not stay in remote forests and canyons, but pollutes the air for miles over long periods of time."²⁸⁷ By claiming the mantle of 1960s-era pro-human, anti-pollution environmentalism, Bischel appeals to urban dwellers that have always made up the bulk of the environmental movement's constituency.²⁸⁸ By not including human health as central to their narrative, environmentalist damage their long-term aims by constructing a movement vulnerable to charges of being more concerned about the fate of forest ecosystems than that of human communities. Historians have now for more than a decade pointed out the failure of this approach.²⁸⁹

Some pro-thinning politicians, including Dave Cox of California, lamented that Bush-era forest thinning projects did not lead to a sea change in logging policy because environmentalists fought the plan in

283. This is a hotly contested notion. See, e.g., RUSSELL T. GRAHAM ET AL., USFS, EFFECTS OF THINNING AND SIMILAR STAND TREATMENTS ON FIRE BEHAVIOR IN WESTERN FORESTS, GENERAL TECHNICAL REPORT PNW-GTR-463 (1999).

284. Pete Spotts, *Raging Wildfires: Climate Changes to Blame for Record Season?*, CHRISTIAN SCIENCE MONITOR, July 11, 2011, <http://www.csmonitor.com/Environment/2011/0711/Raging-wildfires-Climates-changes-to-blame-for-record-season>.

285. WHITE HOUSE ARCHIVES, *supra* note 272; Fleck, *supra* note 273.

286. David A. Bischel, *Pro and Con on the Healthy Forests Initiative: Bipartisan Initiative Will Save California's Forests*, SAN FRANCISCO CHRONICLE, Oct. 31, 2003, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2003/10/31/EDGNA2N1GG1.DTL>.

287. *Id.*

288. *Id.*

289. White, *supra* note 24.

the courts.²⁹⁰ For example, in the 2007 case *Sierra Club v. Bosworth*, the Ninth Circuit Court of Appeals found in favor of environmentalists suing the USFWS for excluding small timber sales from filing an environmental impact statement.²⁹¹ In the wake of the devastating Cerro Grande fire in New Mexico, forest thinning has become a hot topic.²⁹² Given the fragility of many western landscapes to climate change, it is quite likely this problem will continue to grow in coming decades.²⁹³

The Obama administration has not made forestry policy a priority.²⁹⁴ Nor has the administration always supported endangered and threatened species protection.²⁹⁵ Obama reconsidered plans for spotted owl recovery in the Northwest created under George W. Bush's administration.²⁹⁶ Yet in May 2011, his administration de-listed gray wolves across eight states in the Midwest and Northern Rockies.²⁹⁷ Environmentalists see the delisting of wolves as premature and most likely a political move for western Democrats involved in tough reelection campaigns.²⁹⁸ Moreover, as a candidate Obama assured environmentalists that he would respect President Clinton's rule to protect roadless areas in national forests from commercial logging.²⁹⁹ However, environmental groups have criticized the Obama Administration for its reticence in giving up on the previous administration's logging projects.³⁰⁰

In early 2011 Obama released his forestry plan, which decentralizes many wildlife decisions to local forest managers, giving them discre-

290. See, e.g., Dave Cox, *Fire Ruling Puts Residents at Risk*, SACRAMENTO BEE, Dec. 13, 2007, at G4; Greyson Howard, *Forest Service Logging Rule Gets Overturned*, SIERRA SUN, Dec. 10, 2007, <http://www.sierrasun.com/article/20071210/NEWS/71210008>.

291. *Sierra Club v. Bosworth*, 510 F.3d 1016 (9th Cir. 2007).

292. Jim Robbins, *Studies Find Danger to Forests in Thinning Without Burning*, N. Y. TIMES, Nov. 14, 2006, <http://www.nytimes.com/2006/11/14/science/earth/14fire.html>.

293. *Id.*

294. See, e.g., *Obama Delists Gray Wolves*, SPOKESMAN-REVIEW (Spokane, Wash.), May 4, 2011, <http://www.spokesman.com/stories/2011/may/04/obama-delists-gray-wolves>; Brad Knickerbocker, *Budget Bill Cuts Federal Wolf Protection. Environmentalists Howling*, CHRISTIAN SCIENCE MONITOR, Apr. 16, 2011, <http://www.csmonitor.com/USA/Politics/2011/0416/Budget-bill-cuts-federal-wolf-protection.-Environmentalists-howling>.

295. *Obama Delists Gray Wolves*, *supra* note 294; Knickerbocker, *supra* note 294.

296. Eric Bontrager, *Obama Admin Rethinking Bush's Spotted Owl Plan*, N. Y. TIMES, Apr. 1, 2009, <http://www.nytimes.com/gwire/2009/04/01/01greenwire-obama-admin-rethinking-bushs-spotted-owl-plan-10419.html>.

297. See *Obama Delists Gray Wolves*, *supra* note 294; Knickerbocker, *supra* note 294.

298. *Obama Delists Gray Wolves*, *supra* note 294.

299. Jeff Barnard, *Oregon Thinning Project Tests Obama Forest Policy*, SEATTLE TIMES, Oct. 11, 2009, http://seattletimes.nwsources.com/html/localnews/2010044573_apusroadlessforests.html.

300. *Id.*

tion on managing some endangered and threatened species.³⁰¹ Many environmental groups and leading Democrats have criticized it for reducing the role of science in forestry planning.³⁰² New Mexico Congressman Martin Heinrich called it a step “in the wrong direction” in forest planning.³⁰³ But without a large and politically powerful constituency of environmentalists, the Obama administration has found it easy to create industry-friendly environmental plans that buy valuable centrist credibility without much political fallout. In both the Pacific Northwest and the American Southwest, an empowered conservative movement supported by an increasingly right-leaning federal judiciary has created a climate where such a turn of events is possible. Logging communities in both the Northwest and New Mexico remain bitter, and the environmental community will likely receive little support from logging towns in defending ESA related court decisions of the 1980s and 1990s.

While historically most societies have come to know the nonhuman natural world through their labor, the ESA has created a conundrum in the wild spaces of the West. All recovery places are sites of work for many kinds of people and animals: owls working in their capacity to breed, prey, and disperse; local communities engaged in collecting dead wood; loggers clearing skinny trees and overgrowth; leisure seekers trekking trails; environmentalists filing suits to protect endangered and threatened species; and federal employees engaged in wrestling with both forest management and owl recovery. The critical questions are: Whose work matters, and what kinds of work are acceptable in nature? Answers to those questions remain as elusive as the spotted owl. Yet work must be a part of the conversation.

We believe the ESA is a vital piece of environmental legislation. But the long-term success of the ESA hinges on discussions and potential alliances between working class peoples and environmentalists. Such alliances are not impossible, as demonstrated by the Catron County Citizens Group in New Mexico. As McEvoy reminds us, “any explanation of environmental change should account for the interembeddedness and reciprocal constitution of ecology, production, and cognition, the last either at the level of individuals, which we call ideology, or at the societal level, which in the modern world we call law.”³⁰⁴ While McEvoy’s argument

301. Deborah Zabarenko, *Environmental Groups Question Obama’s Forest Plan*, REUTERS, May 16, 2011, <http://www.reuters.com/article/2011/05/16/us-forests-usa-idUSTRE74F77920110516>.

302. *Id.*

303. Editorial, *Obama’s Forest Plan Goes in ‘Wrong Direction’*, SANTA FE NEW MEXICAN, May 22, 2011, <http://www.santafenewmexican.com/opinion/Our-View-Obama-s-forest-plan-goes-in—wrong-direction->.

304. McEvoy, *supra* note 65, at 229.

was directed at the problem of the fishing commons in California,³⁰⁵ his model offers one way of thinking about the ESA: as a law best applied as *a part of* the myriad of social and economic landscapes where species recovery takes place. This is a project that requires a new respect for local histories and the environmental knowledge that communities like Roseburg, Oakridge, Truchas, and Reserve can bring to the forest. It also demands that all sides of the debate rethink work in nature. When forest peoples know their work is tied to that of the owl, and that in the long run the health of their communities, their families, and their labor requires a healthy habitat, only then will the ESA be a success.

305. McEvoy, *supra* note 65, at 229.