

FROM CORPORATISM TO CITIZEN OVERSIGHT:

The Legal Fight over California Redwoods, 1969–1999

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INTRODUCTION¹

In 1986, Charles Hurwitz was known in Northern California only as the shadowy Texas Wall Street tycoon who had suddenly and forcibly purchased a titan of the North Coast timber industry. Hurwitz would do little to improve his image on the North Coast, and his company suffered as a result, deepening the already intense Redwood Wars as he waged war against local activists over the fate of the forest he had purchased. The first time Charles Hurwitz, CEO of Maxxam Group Holding, Inc., addressed his new employees at The Pacific Lumber Company, he replied to a question about his intentions by telling the crowd, “There’s a little story about the golden rule. Those who have

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the gold, rule.”² That twist of the biblical Golden Rule about treating others as you’d like to be treated became shorthand for the popular press’ overly simplistic morality story about a conflict between Wall Street and local environmentalists over the fate of Headwaters Forest. The forest was located approximately 250 miles north of San Francisco, and at the time it was the world’s last privately owned and unprotected old-growth redwood forest complex, containing half-a-dozen groves of giant redwoods nearly 300 feet tall, 20 feet in diameter, and nearly 2,000 years old. After Hurwitz acquired Pacific Lumber, North Coast activists identified a 60,000-acre forest threatened by the company’s new logging regime. Pacific Lumber and activists fought for 20 years over how that forest should be managed. They fought in the media, in legislative halls, in the forests, and especially in the courtroom. Litigation developed into the activists’ most powerful tool, and the state courts of California were the most frequent venue for the battles among timber companies, activists, and government agencies. The battles transformed California’s and the nation’s forestry regulations on private land, and demonstrated the power granted to citizen activists by the environmental protection regime erected during the 1970s.

Hurwitz’s quotation did epitomize the history of California forestry regulation to that point. Until 1970, state law *had* granted the timber industry authority to self-regulate. After 1970, however, citizens successfully leveraged the courts to challenge the state’s forestry regime, with its traditional focus on timber production. Thus, by the time Hurwitz orchestrated the takeover of The Pacific Lumber Company and uttered his infamous phrase in 1986, the California Board of Forestry — although still heavily influenced by the needs of the timber industry — had endured nearly two decades of legal assault on the state’s long-standing production-focused logging practices and institutions.³

² The quote can be found in numerous articles, including Ellen Schultz, “A Raider’s Ruckus in the Redwoods,” *Fortune*, April 24, 1989, 72, and John Skow, “Redwoods: The Last Stand,” *Time*, June 24, 2001, <http://www.time.com/time/magazine/article/0,9171,1101940606-164513,00.html>. The best description of the incident at Scotia is by David Harris, *The Last Stand: The War Between Wall Street and Main Street over California’s Ancient Redwoods* (New York: Times Books, 1995).

³ Because of this corporatist system, no “iron triangle” existed to govern private timber operations on private land in California. The industry was left to its own devices, and the board helped coordinate fire and pest protection, as well as reforestation efforts.



THE MISTY ENVIRONS OF HEADWATERS FOREST.

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A close study of the history of citizens' legal campaigns against California's forestry regulations challenges some of the key literature about postwar environmental politics by shifting the focus of study from the national perspective to the local perspective. The typical narrative of postwar environmental politics, as constructed by Stephen Fox, Samuel Hays, Robert Gottlieb, Michael Kraft, Richard Lazarus, and others, has, until recently, emphasized the nationalization and professionalization of

After 1970, because the Board of Forestry was retained, an iron triangle of the Board, the courts, and interest groups regulated timber operations on private land. This is a very different situation than the regulation of the national forests where Congress, the courts, the Forest Service, and interest groups shaped forest service policy on public lands after 1970. See Paul Hirt, *A Conspiracy of Optimism: Management of the National Forests since World War Two* (Lincoln: University of Nebraska Press, 1994) and Dennis C. Le Master, *Decade of Change: The Remaking of Forest Service Statutory Authority during the 1970s* (Westport, Conn.: Greenwood Press, 1984) for analyses of the changes in national forest governance and management.

“modern” environmentalism and the development of command-and-control federal environmental regulation. At its core, the narrative explains how the expanded, largely white middle-class environmental movement — animated by its understanding of popular ecology and of the destructive forces of modern industry — rose up and demanded a cleaner, more beautiful environment filled with greater recreation opportunities. Earth Day 1970 represents the culmination of that popular upsurge, and from there, professional “environmentalists,” politicians, and bureaucrats took the reins and built the modern environmental protection regime. Environmental politics was then integrated into the everyday horse-trading of Capitol Hill. There, D.C.-based environmental groups, business interests, and state actors lobbied and debated the scope and intent of the new environmental laws, and the courts rendered judgments.⁴

The top-down narrative of nationalization and professionalization frays when viewed from a local perspective, however. Many scholars have addressed local activism and its effects on the federal environmental

⁴ On the rise of modern environmentalism, see especially Samuel P. Hays, *Beauty, Health, and Permanence: Environmental Politics in the United States, 1955–1985* (Cambridge: Cambridge University Press, 1987) and *A History of Environmental Politics since 1945* (Pittsburgh: University of Pittsburgh Press, 2000); Roderick Nash, *Wilderness and the American Mind* (New Haven: Yale University Press, 1973); Richard J. Lazarus, *The Making of Environmental Policy* (Chicago: University of Chicago Press, 2004); and Adam Rome, *The Bulldozer in the Countryside: Suburban Sprawl and the Rise of American Environmentalism* (Cambridge: Cambridge University Press, 2001). On the nationalization and professionalization of modern environmental politics and the environmental movement, see Thomas R. Dunlap, *Faith in Nature: Environmentalism as Religious Quest* (Seattle: University of Washington Press, 2004), who argued that professional national groups tried to impose their ideologies on local people; J. Brooks Flippen, *Nixon and the Environment* (Albuquerque: University of New Mexico Press, 2000); Stephen Fox, *The American Conservation Movement: John Muir and His Legacy* (Madison: University of Wisconsin Press, 1985), whose argument, to be fair, revolved more around the role of the “radical amateur” in the environmental movement, despite the professionalization of the movement; Robert Gottlieb, *Forcing the Spring: The Transformation of the American Environmental Movement* (Washington, D.C.: Island Press, 1993); Michael E. Kraft, *Environmental Policy and Politics* (New York: Pearson Longman, 2007); James Salzman and Barton H. Thompson, *Environmental Law and Policy* (New York: Foundation Press, 2003); Joseph L. Sax, *Mountains Without Handrails: Reflections on the National Parks* (Ann Arbor: University of Michigan Press, 1980); and James Morton Turner, “The Promise of Wilderness: A History of American Environmental Politics, 1964–1994” (PhD diss., Princeton University, June 2004).

protection regime and public land management, but there are relatively few treatments of the local politics of forestry on private land. The federal studies illuminated the dramatic postwar changes in federal policy for public land management, the rifts and tensions between local and national environmental groups during the spotted owl conflict, and the ways local groups affected the implementation of the Wilderness Act and the National Environmental Policy Act. Studying the Redwood Wars demonstrates how local activists on the North Coast of California developed a litigation campaign to discredit and destroy the Progressive-Era corporatist system in order to better consider non-commercial forest resources in the regulation of private timber land.⁵

⁵ Hirt, *Conspiracy of Optimism* and Le Master, *Decade of Change* are great studies of the transformation of federal land management. Some of the recent treatments of local forestry activism as it related to federal laws such as the Wilderness Act of 1964, the Endangered Species Act, and the National Forest Management Act include William Dietrich, *The Final Forest: The Battle for the Last Great Trees of the Pacific Northwest* (New York: Penguin Books, 1993); Kathie Durbin, *Tree Huggers: Victory, Defeat & Renewal in the Northwest Ancient Forest Campaign* (Seattle: The Mountaineers, 1996); Kevin R. Marsh, *Drawing Lines in the Forest: Creating Wilderness Areas in the Pacific Northwest* (Seattle: University of Washington Press, 2007); and Samuel P. Hays, *Wars in the Woods: The Rise of Ecological Forestry in America* (Pittsburgh: University of Pittsburgh Press, 2007). Henry F. Bedford produced a wonderful study of the local activism in New Hampshire regarding the NEPA impacts on the nuclear industry, *Seabrook Station: Citizen Politics and Nuclear Power* (Amherst: University of Massachusetts Press, 1990). The literature on the Redwood Wars is largely journalistic and autobiographical, including Judi Bari, *Timber Wars* (Monroe, Me.: Common Courage Press, 1994); Joan Dunning, *From the Redwood Forest: Ancient Trees and the Bottom Line: A Headwaters Journey* (White River Junction, Vt.: Chelsea Green Publishing, 1998); Dave Foreman, *Confessions of an Eco-Warrior* (New York: Harmony Books, 1991); and Julia Butterfly Hill, *The Legacy of Luna: The Story of a Tree, a Woman, and the Struggle to Save the Redwoods* (San Francisco: HarperSanFrancisco, 2000). Harris, *The Last Stand* is the only journalistic book that deals solely with the Headwaters conflict. The journalistic and polemical treatments that attend briefly to the Headwaters conflict include Alston Chase, *In a Dark Wood: The Fight over Forests and the New Tyranny of Ecology* (New York: A Richard Todd Book / Houghton Mifflin Company, 1995); David Helvarg, *The War against the Greens: The "Wise-Use" Movement, the New Right, and the Browning of America* (Boulder: Johnson Books, 2004); Christopher Manes, *Green Rage: Radical Environmentalism and the Unmaking of Civilization* (Boston: Little, Brown, 1990); Jacqueline Vaughn, *Green Backlash: The History and Politics of the Environmental Opposition in the U.S.* (Boulder: Lynne Rienner Publishers, 1997); and Susan Zakin, *Coyotes and Town Dogs: Earth First! and the Environmental Movement* (New York: Viking,

Under corporatist governance, the state officially grants industries the ability to improve efficiencies via self-regulation. The state facilitates industry participation by forming official regulatory boards on which industry holds a majority of seats. The idea behind corporatism is that those people with the best knowledge of an industry's operations ought to be the ones who set the rules and govern the development of the industry. The state administers the programs and brings resources to the table. Corporatism, thus, is a formal institutional arrangement, not a description of the policy preferences of a regulatory board. The U.S. Forest Service, Bureau of Land Management, and the Fish and Wildlife Service never were managed by corporatist boards, and accordingly, national environmental litigation addressed agency action and statute interpretation. However, the states utilized corporatist boards more frequently, which complicated the shift to the modern environmental protection regime. Stephanie Pincetl correctly identified the role of California's Progressive-Era governance traditions in preventing land use and ownership reform in California, but largely without considering successful challenges to corporatist arrangements. The history of California forestry reveals persistent insurgence, intense local activism, and the breakdown of a corporatist, production-focused governance tradition. That history also points to the national consequences, most of them unintended, of the local activism.⁶

Litigation was the local reformers' most successful tool during the Redwood Wars. A small group of citizens leveraged the power of the courts and the Legislature, while simultaneously marshalling more power into their own hands. Their legal campaign accomplished four things that

1993). A few scholarly books that are focused on environmentalism briefly mention the Headwaters conflict, including Hays, *Wars in the Woods*, Carolyn Merchant, *Radical Ecology: The Search for a Livable World* (New York: Routledge, 2005) and Rik Scarce, *Eco-warriors: Understanding the Radical Environmental Movement* (Walnut Creek, Calif.: Left Coast Press, Inc., 2006). In their scholarly treatments, Hays and Merchant identify the wrong timber company and incorrect forest, respectively.

⁶ *Corporatism*, as used here, refers to the definition Ellis Hawley used in his classic article, "The Discovery and Study of a 'Corporate Liberalism,'" *The Business History Review* 52, No. 3 (Autumn 1978): 309–320. Hawley defines *corporatism* as a system whereby industries are guided by "officially recognized, non-competitive, role-ordered occupational or functional groupings . . . where the state properly functions as a coordinator, assistant, and midwife rather than director or regulator."

advocacy, protests, and direct action alone could not accomplish. First, citizen suits forced the state to legislatively abandon the official corporatist and development-only focus of state forestry laws. Second, the cases forced the Board of Forestry to back away from its traditional alliance with the timber industry at crucial times. Third, the litigation permanently blocked proposed harvests of many old-growth redwood groves. And finally, the cases drove President Bill Clinton, Governor Pete Wilson, and Pacific Lumber to negotiate a settlement of the Headwaters Forest conflict. As scholars have pointed out, public demonstrations created the necessary political will to act at times during the establishment of the modern environmental protection regime, advocacy helped build the national and state laws, and national litigation pushed the implementation of the laws along. In California, the long corporatist tradition mitigated the usefulness of those tools because the Legislature had previously abrogated its legislative duties with respect to the timber industry. As a result, citizens took their case to the courts to dismantle corporatism and production-focused timber regulation.⁷

The California forestry challenges deserve to be counted among the most important environmental law developments in the postwar United States because they fundamentally transformed an entire system of governance.

⁷ Some good analyses of general postwar citizen group legal history with respect to NEPA are Hays, *Beauty, Health, and Permanence*, chapter 14; Lazarus, *The Making of Environmental Policy*; William H. Rodgers, Jr., *Environmental Law* (St. Paul: West Publishing Company, 1994); Salzman and Thompson, *Environmental Law and Policy*; Joseph L. Sax, *Defending the Environment: A Strategy for Citizen Action* (New York: Alfred A. Knopf, Inc., 1971); David B. Sicilia, "The Corporation Under Siege: Social Movements, Regulation, Public Relations, and Tort Law since the Second World War," in *Constructing Corporate America: History, Politics, Culture*, eds. Kenneth Lipartito and David B. Sicilia (Oxford: Oxford University Press, 2004); and Richard B. Stewart, "A New Generation of Environmental Regulation?," *Capital University Law Review* 29 (2001): 21–182. With respect to the Forest Service, the Monongahela and Tongass cases are the most important. Paul Hirt's analysis of the use of the courts to challenge the "get out the cut" mentality of the U.S. Forest Service is a very important study, especially chapter 11, "From Gridlocked Conflict to Compromised Policy Reform, 1969–1976, in *A Conspiracy of Optimism*. Le Master, *Decade of Change* recounts the history of the way citizen suits, industry and congressional pressure to increase harvests, and Forest Service implementation of clearcutting, led to the creation of the Renewable Resources Planning Act of 1974 and the National Forest Management Act of 1976, which transformed Forest Service oversight and the agency's mission.

The environmental litigation of citizens at the federal level expanded, clarified, and enforced particular aspects of the modern federal environmental protection regime. For example, the National Environmental Policy Act (NEPA) and other laws expanded the responsibilities of federal agencies to non-commercial landscape resources, and they empowered citizens to participate in agency decisions and act as private attorneys general. And citizens turned to the courts using NEPA and other legal tools to force agencies to better consider public and ecological health and to comply with the new environmental laws. In the case of the Forest Service, local citizen groups sued the agency during the early 1970s and drove Congress to pass sweeping legislation that overhauled the agency's mission and oversight. However, as dramatic as the changes in environmental regulation and oversight were at the federal level, the fundamental structure of governance that was handed down from the Gilded Age and the New Deal remained unchanged. The U.S. regulatory system maintained its command-and-control structure. The Forest Service still maintained a client-agency relationship with the timber industry. The litigation campaign orchestrated by North Coast activists was different because it dealt with state law and private land, it gutted a governance structure and philosophy — corporatism — and it destroyed part of the vestigial remains of the corporatist tradition.⁸

The federal cases are important because they clarified legislative mandates and forced agency action to fulfill new legal obligations, but they did not reorder institutions in the same way as the North Coast activists' efforts in California. The most-studied litigation involved the implementation of the Clean Air and Clean Water Acts, the Endangered Species Act,

⁸ The most well-known environmental cases include *Scenic Hudson Preservation Conference v. Federal Power Commission*, 407 U.S. 926 (1972) because it was the first time an environmental group was granted legal standing. *Sierra Club v. Morton*, 405 U.S. 727 (1972) changed the traditional injury-in-fact standing requirements to allow citizens to use the citizen suit provisions of the federal environmental laws if they could demonstrate they had suffered recreational or aesthetic injuries. Previously, standing was granted only if the plaintiffs could demonstrate specific economic or personal harm to themselves. The literature also prioritizes the cases that clarified the 1970s environmental laws. *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978) clarified that the Endangered Species Act was to be implemented without consideration of the economic impact of protecting species. Likewise, *Lead Industries Association v. EPA*, 647 F.2d 1130 (Fed. Cir. 1980) established the principle that the EPA must *only* base air quality standards on health considerations, not on economic or technical considerations.

and the National Forest Management Act. Those cases helped define the scope and intent of the modern environmental protection regime. The literature is rich with analysis of those cases and their effects. This article focuses on the eight most important cases in the movement to transform California forestry governance. Because the movement set its sights on the fundamental transformation of institutions, increased regulation of private property, and giant redwoods, it led to, and was part of, one of the most important environmental battles of the late twentieth century in the United States. As such, its place in environmental law needs to be better situated than it currently is.

THE CORPORATIST TRADITION

The California Board of Forestry was a model of corporatism long before Herbert Hoover popularized the concept, and the Board of Forestry remained an official corporatist body until 1970. In 1885, California became one of the first states to regulate private timber land through the use of an appointed Board of Forestry, and that Board of Forestry appears to be one of the first incarnations of corporatist regulatory entities. As previously noted, under corporatist governance, the state grants industries the ability to improve efficiencies via self-regulation. The state facilitates industry participation by forming official regulatory boards on which industry holds a majority of seats. The California Board of Forestry was created and designed to ensure that those with intimate knowledge of the industry could guide the development of California timber operations. The board's mission was not to wrest control of the timber industry from large companies and landholders, but rather to efficiently manage the industry by safeguarding its interest in long-term timber harvests. However, the Board of Forestry was more committed to its economic development goals than it was to its conservation mission.⁹

⁹ Samuel P. Hays provides the classic interpretation of conservationism and progressivism in *The Gospel of Efficiency: The Progressive Conservation Movement, 1890–1920* (Cambridge: Harvard University Press, 1959), chapter 13. Hays argues that progressivism and conservationism were motivated by the efficient use of resources via the central guiding hand of executive branch scientific experts, not by “people versus the interests” politics. The Board of Forestry in California was similar, but different, in that the Board was not composed of scientific experts but rather experts of the industry.

The 1885 Board of Forestry was established to ward off the predicted timber shortage, and the governor appointed its five members based on their knowledge of timber industry operations. Rather than address harvest methods or forest regeneration to ward off the predicted shortage, the first Board of Forestry mostly concerned itself with recommendations to the Legislature to protect the inventories of the state's private timber operators. Indeed, from 1885 until its dissolution in 1893, no law was passed that dealt with a forestry issue other than the prevention of fires and trespassing. A singular exception in early California history was a law passed in 1868, long before the establishment of the board, that encouraged the planting of shade and fruit trees along highways in order to protect travelers from the heat and to provide a source of food in case of emergency.¹⁰

In 1905, the Legislature reorganized the Board of Forestry, but retained the corporatist structure. The new Board of Forestry was formally charged with preventing fires, protecting public and private land from trespass, managing the state parks, and purchasing clearcut land to manage as state forests to regenerate the timber supply. Timber harvesting methods were left to the judgment of individual timber operators. On the recommendation of the Board of Forestry, the Legislature passed five fire prevention laws, including the 1923 Compulsory Fire Patrol Act, as well as an insect abatement law in 1923, all in an effort to protect the timber supply.¹¹

In 1927, the Board of Forestry was reorganized within the new Department of Natural Resources, and the reorganization — still a body of five members appointed by the governor, based on knowledge of the timber

The state forester, overseen by the board, provided technical analysis and advice. Stephanie S. Pincetl, *Transforming California: A Political History of Land Use and Development* (Baltimore: Johns Hopkins University Press, 1999) argued that the progressive boards and commissions created during the Progressive Era directly contributed to land use and ownership patterns during the twentieth century because the regulatory boards were composed of business experts focused on development.

¹⁰ Chapter 498 of the 1868 Assembly; see C. Raymond Clar, *California Government and Forestry from Spanish Days Until the Creation of the Department of Natural Resources in 1927* (Sacramento: Division of Forestry, Department of Natural Resources, State of California, 1959) [vol. 1], 74 and 96–98.

¹¹ Clar, *California Government and Forestry* [vol. 1], 214, 297, 402, 411, 433, 445. And see Samuel Trask Dana and Myron Krueger, *California Lands: Ownership, Use, and Management* (Washington, D.C.: The American Forestry Association, 1958), 64 and 68, and Schrepfer, *Fight to Save Redwoods*, 23.

industry — officially recommitted its members to timber supply and water. The new Parks Commission took over control of the management of recreation resources. During the life of the third Board of Forestry, in addition to the usual fire prevention, state nursery, and regeneration laws and recommendations, a minimum diameter law that prohibited the harvest of trees smaller than eighteen inches in diameter was passed in 1943. That law marked the first time the Board of Forestry encroached upon the management prerogatives of private industry in the name of conservation, and it came long after a 1932 Department of Agriculture report that recommended selective cuts in Redwood Country in order to prevent deforestation.¹²

After World War II, the Legislature made some cosmetic changes to the regulatory regime, but maintained its corporatist orientation. Without legislative oversight, the Board of Forestry continued to support development but not forest conservation. For example, the 1943 law prohibiting the harvest of trees less than eighteen inches in diameter may appear to mark a move away from corporatism, toward greater legislative oversight, but that law was in fact another in the long history of regulations devised by businesses in order to protect their markets. In this case, the minimum diameter law protected big timber companies from competition from small, independent, “gyppo” contractors best suited to harvest small trees. Like the minimum diameter law, the 1945 Forest Practice Act that governed timber operations on private land also appeared to undercut corporatism while promoting conservationism. The law required the Board of Forestry to create forest practice rules to ensure that the state’s private timber operators used the best conservation practices. However, it also perpetuated industry self-regulation, and when the Board of Forestry created the rules, it predictably declined to include penalties for violations. Finally, in 1960 the Board of Forestry, despite the recommendations of North Coast timber reports, began approving large clearcuts because the timber industry wanted to capitalize on the housing boom and on decreased timber production

¹² See C. Raymond Clar, *California Government and Forestry [vol. 2]: During the Young and Rolph Administrations* (Sacramento: Division of Forestry, Department of Conservation, State of California, 1969), 36–37, 52, 121–125, 148–150, 189–274. Also see, Pincetl, *Transforming California*, 110; S.B. Show, “Timber Growing Practice in the Coast Redwood Region of California,” Technical Bulletin 283, March 1932, in USDA Technical Bulletins No. 276–300 (Washington, D.C.: U.S. Government Printing Office, 1932).

in the Pacific Northwest. None of these postwar logging developments is surprising. The Board of Forestry's own assessment of its postwar priorities were to prevent fire from destroying timber and to protect the timber industry from unfair competition from within — priorities that reveal the influence of the postwar housing boom on the timber industry as well as its commitment to helping the timber companies operate profitably.¹³

The resilience of California's corporatist Board of Forestry stands in stark relief against the rising tide of "modern environmentalism" and the resulting changes in environmental politics after World War II. The popularity of outdoor recreation increased dramatically, as did concern about suburban development and humankind's impact on the planet. As a result, national environmental groups like the Sierra Club and The Wilderness Society grew in size and stature. And local groups arose to combat local pollution, local land management, and suburban development. While the nation's environmental attention swung from nuclear fallout to Dinosaur National Monument to The Wilderness Act, the California Board of Forestry remained beyond reproach for the most part. Outside of loud complaints, no active opposition to the board's operations was apparent until the late 1960s. And why would there have been? Most of the state's residents did not live near enough to timber lands to witness the increased logging and clearcutting. The Save The Redwoods League purchased grand redwood groves and created parks out of them for recreationists and scientists. Appreciation of the non-economic values of forests did not become widespread until well after World War II. And the timber industry was a major contributor to California's postwar prosperity, just as it was nationally. As a result, residents of the North Coast seemed unwilling to bite the hand that fed them, and other Californians were not concerned with North Coast logging.¹⁴

¹³ C. Raymond Clar, *California Government and Forestry* [vol. 2], 36–37, 52, 121–125, 148–150, 189–274. Also see, Pincetl, *Transforming California*, 110; Dana and Krueger, *California Lands*, 69, 70, 71, 187, 188, 192–193; Pincetl, *Transforming California*, 162–165; and Michael G. Barbour, et al., *Coast Redwood: A Natural and Cultural History* (Los Olivos, Calif.: Cachuma Press, 2001), 188.

¹⁴ Samuel P. Hays and Roderick Nash provide classic discussions about the changing attitudes of the American public toward natural resources and landscapes during the nineteenth and twentieth centuries (Hays, *Beauty, Health, and Permanence* and Nash, *Wilderness and the American Mind*). See also, J.W. Penfold, "The Dinosaur

Challenges to the Board of Forestry's predominance first emerged in the 1950s, when citizen groups such as the Sierra Club complained about the rate of timber harvests and the prolific use of clearcutting in Redwood Country. As a result, the Legislature took steps to increase its oversight of the timber industry. In 1962, the Legislature commissioned a report that concluded that the forest practice rules "failed to provide adequate enforcement" to protect public values in water, fishing, and recreation." In 1967, another legislative report concluded that the rules needed to be broadened if California were to avoid major damage to its most important watersheds. A final legislative committee study of the forest practice rules concluded in 1971 that logging was one of the primary causes of the 80 percent decline in salmon and steelhead runs in Northern California. The agitation of the Sierra Club and others thus helped undercut confidence in the corporatist regulatory regime by pressuring the Legislature to study the industry in more detail.¹⁵

Controversy," *Sierra Bulletin* 36, No. 10 (December 1951); Rome, *Bulldozer in the Countryside*; Stephen M. Spencer, "Fallout: The Silent Killer," *The Saturday Evening Post*, August 29, 1959; and McGee Young "From Conservation to Environment: The Sierra Club and the Organizational Politics of Change," *Studies in American Political Development* 22 (Fall 2008): 183–203. See Pincetl, *Transforming California*, 163, for a discussion of the new pro-timber attitudes of North Coast residents after World War II.

¹⁵ See Henry Sadler, "Winter Damage in Redwood Parks," *Sierra Bulletin* 41, No. 8 (October 1956): 12–18; Peggy Wayburn and Edward Wayburn, "Our Vanishing Wilderness," *Sierra Bulletin* 42, No. 1 (January 1957): 6–9; George Ballis, "Havoc in Big Trees," *Sierra Bulletin* 42, No. 5 (May 1957): 10–11; Peggy and Edward Wayburn, "Bulletin," *Sierra Bulletin* 44, No. 9 (December 1959); Peggy Wayburn, "The Tragedy of Bull Creek," *Sierra Bulletin* 45, No. 1 (January 1960): 10–11; Newton B. Drury, "Chapter II — Bull Creek Story: Redwoods and You," *Sierra Bulletin* 45, No. 4 (April/May 1960): 10–13; and Susan R. Schrepfer, *The Fight to Save the Redwoods: A History of Environmental Reform, 1917–1978* (Madison: University of Wisconsin Press, 1983), 108–110, 112, 117, 144; and Pincetl, *Transforming California*, 162–165, regarding the 1950s Sierra Club and Fish and Game complaints; Assembly Interim Committee on Natural Resources, Planning and Public Works, *Findings and Recommendations Related to the Forest Practice Act, 1961–1962*, quoted in Sharon Duggan and Tara Mueller, *A Guide to the California Forest Practice Act and Related Laws* (Point Arena, Calif.: Solano Press Books, 2005), 1; Assembly Subcommittee on Forest Practices and Watershed Management, *Man's Effect Upon the California Watershed, 1965–1967*, quoted in Duggan and Mueller, 1–2; Committee on Salmon and Steelhead Trout, *An Environmental Tragedy*, 1971, quoted in Duggan and Mueller, 2. The history of state legislators, agency employees, and environmentalists pushing these studies and reforms still needs to be told. For this study, the fact

THE DESTRUCTION OF CORPORATISM

The inability, or unwillingness, of the Board of Forestry to accommodate the public's desire to consider the non-commercial values of the forest led directly to citizen actions that repealed the 1945 Forest Practice Act and the Board of Forestry it authorized. In the late 1960s, Bayside Timber Company obtained a logging permit from the board for land in San Mateo County, near Santa Cruz. Down-slope residents objected to the logging plan because of projected erosion and watershed damage, and successfully pressured the county Board of Supervisors to reject Bayside's road-building permit. Bayside Timber subsequently sued the county, but in 1971, the First District Court of Appeal in California ruled in favor of the county's right to block the logging. The court declared that the 1945 Forest Practice Act unconstitutionally delegated legislative authority to "persons pecuniarily interested in the timber industry."¹⁶

The court identified two main problems with the 1945 act, despite recent amendments. First, the act authorized the governor to appoint a five-person board comprising three representatives of the timber industry, one from the grazing industry, and one from the general public. Second, all forest practice rules were to be approved by two-thirds of the timber owners in any forest district before being finalized by the Board of Forestry. While the *Bayside* case was working its way to appeal in 1970, the Legislature attempted to fix the self-regulation problem by increasing the size of the Board of Forestry to seven members. The additional two members were to be from the general public with "an interest in and knowledge of the environment." The court noted that the additional Board of Forestry members did not change the fact that two-thirds of a district's private timber owners had to approve all forest practice rules, and so the court declared the 1945 act unconstitutional. As the first successful attack on the Board of Forestry's independence, the *Bayside*

they took place, and the framework they set up, are the most important aspects of that history because it is that framework that led to the changes in law during the 1970s that gave citizens greater access to the bureaucracy and courts. See Henry J. Vaux, *Timber in Humboldt County*, California Agricultural Experiment Station Bulletin 748 (University of California, 1955); William D. Pine, "Humboldt's Timber: A Present and Future Problem," pamphlet (Eureka, Calif.: Humboldt County Board of Supervisors, 1952).

¹⁶ *Bayside Timber v. Board of Supervisors*, 20 Cal. App. 3d 1, 7 (1971).

decision marks the beginning of citizen actions to overhaul California's forestry regime.¹⁷

Subsequent passage of the 1973 Forest Practice Act, as NEPA did in 1970 for federal environmental protection law, marked a sea change in private land use law in California because the law was designed to shift the state's focus toward resource conservation, and it deputized the citizenry. The new law reflected the more powerful status of scientists in postwar environmental politics and was based on the 1972 UC Davis Report's recommendation of a system of "resource conservation standards to protect watersheds and ecological values." The law charged the Board of Forestry and the Division of Forestry it oversaw with creating forest practice rules to end the depletion of timber resources, "giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment and aesthetic enjoyment." The law additionally required timber companies to submit Timber Harvest Plans before any new cutting and to allow the Department of Fish and Game and the Water Quality Control Boards to comment on the plans.

The most important sections of the new law for citizen groups provided greater citizen oversight of the Timber Harvest Plan process. The new law mandated public review of Timber Harvest Plans before final approval, and another section allowed citizens to challenge the Department of Forestry (CDF) and the Board of Forestry decisions in court (following the model of the NEPA and the federal Clean Air and Water Act amendments of 1970 and 1972, respectively). The citizen suit provision specifically allowed citizens to sue CDF and the Board of Forestry to obtain judicial review of administrative decisions. Additionally, the state Code of Civil Procedure granted citizens the right to challenge discretionary agency actions. Environmental activists eagerly embraced these new tools and were able to aggressively use the citizen suit provisions because, unlike federal environmental cases,

¹⁷ Forest Practice Act, § 4572, as amended in 1970, quoted in *id.*, at 9. Sharon Duggan, "Citizen Enforcement of California's Private Land Forest Practice Regulations," *Journal of Environmental Law & Litigation* 8 (Spring 1993): 291–315. Duggan rightly argues that *Arcata* (see next section) provided motivation for citizens to watchdog the timber harvest plan review process (p. 4). However, *Bayside* marks the beginning of the citizen watchdog era because citizens and citizen groups pressured the county Board of Supervisors to reject a harvest plan and argue the unconstitutionality of the 1945 FPA on appeal.

issues of standing regarding environmental group plaintiffs never became an issue in California. The courts had long recognized an exception to the specific economic injury/interest test for cases involving a “public right . . . to procure the enforcement of a public duty.” The new act also reconstituted the Board of Forestry with five members from the public, three from the forest products industries, and one from the livestock industry, a move naively meant to break the timber industry’s grip on the board. Out of this system, a legal and political battle arose over control of board policies and California’s last unprotected ancient forests.¹⁸

“HITTING THE DONKEY”: FORCING OUT DE FACTO CORPORATISM WITH CONTINUED LITIGATION

ARCATA AND GALLEGOS: TWO EARLY STEPS TO FORCE BOARD COMPLIANCE WITH CEQA AND FPA

The Board of Forestry, like its federal counterparts, largely resisted its new responsibilities during the 1970s, and citizens continued to challenge the state’s corporatist tradition for logging regulation, just as citizen groups challenged federal agency actions under NEPA. In 1973, over the objections of the National Park Service, the Board of Forestry ruled that clearcutting in the Redwood Creek watershed did not harm Redwood National Park. It also approved an Arcata National Corporation harvest plan within the watershed. The Natural Resources Defense Council, in line with their federal efforts to clarify and enforce NEPA, sued Arcata National and the state forester, arguing that the plan did not adequately consider environmental harm as required by the California Environmental Quality Act (CEQA, the state equivalent of NEPA), which required environmental

¹⁸ Institute of Ecology at the University of California, Davis, *Public Policy for California Forest Lands* (UC Davis, 1972), quoted in Duggan and Mueller, *Guide to Forest Practice Act*, 2–3. See Pincetl, *Transforming California*, 167–168, and Barbour, *Coast Redwood*, 188–189. For a detailed review of the sections of the 1973 Forest Practices Act (Pub. Res. Code § 4511 et seq.), see Duggan and Mueller, 6–9 and 790–796. The citizen suit provision of the FPA is contained within Pub. Res. Code § 4514.5. The ability to challenge discretionary actions is found in Code of Civ. Pro. §§ 1085 and 1094.5. See Duggan and Mueller, 797–798, for a discussion of issues of standing in California.

impact studies prior to any state agency taking actions that could cause significant environmental impacts. The law also required state agencies to propose mitigations for environmental impacts. Arcata National argued that CEQA guidelines did not apply to the Timber Harvest Plans because plan approval was a ministerial duty of the state forester, not a discretionary action. Superior Court Judge Arthur Broaddus ruled in 1975 that Timber Harvest Plans were a discretionary action and thus governed by CEQA, and further ruled that the content of the contested harvest plans failed to fulfill the Environmental Impact Report requirement of CEQA. Development-focused corporatism was hit with a second major blow when Arcata National unsuccessfully tested the industry and the Board of Forestry's autonomy in a 1976 appeal of Judge Broaddus' ruling.¹⁹

The Board of Forestry's continued resistance to its duties to CEQA and the non-economic mandates of the Forest Practice Act encouraged citizens to continue their legal challenges to corporatism. In 1978, Sonoma County residents Francine Gallegos and Louise Patterson, along with the Camp Meeker Improvement Association, obtained a writ of mandate to negate the Board of Forestry's approval of a Chenoweth Lumber Company harvest plan, one that the Department of Health concluded would "threat[en] . . . the quantity and quality of water in the Camp Meeker area." In a sequence of events that became a pattern through the 1980s, CDF rejected the Chenoweth harvest plan based on the Department of Health's concerns, but Chenoweth appealed to the Board of Forestry, the board overturned CDF's dismissal, and citizens sued.

Gallegos et al. successfully argued that the *Arcata* ruling did not fully capture all of the ways CEQA applied to timber plans. Specifically, they charged the Board of Forestry with failure to comply with CEQA requirements because the Board of Forestry had not based its decision on "substantial evidence" and had not responded to public comments regarding

¹⁹ *Natural Resources Defense Council, Inc. v. Arcata National Corp.*, 59 Cal. App. 3d 959 (1976); 58 Ops. Cal. Atty. Gen 250 (1975). See Schrepfer, *Fight to Save Redwoods*, 194 and 197, for a discussion of the Board's refusal to heed National Park Service orders to enforce the California Forest Practice Act and stop logging in the watershed. The California Environmental Quality Act is California Public Resources Code §§ 21000–21006, 21050, 21060–21072, 21080–21098, 21100–21108, 21150–21154, 21156–21159.9, 21160–21162, and 21165–21177.



GIL GREGORIO PROTESTING CORPORATISM.

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the Chenoweth harvest plan. The appellate court agreed with Gallegos et al. and the *Arcata* court that harvest plans had to fulfill CEQA requirements for Environmental Impact Reports. The *Gallegos* court went even further and demanded that the board and state forester had to respond *in*

writing to public comments regarding significant environmental impacts of a harvest plan, and that the response needed to explain the state forester's decision in a "reasoned" manner based on "substantial evidence." Even though official corporatist rule had ended, the industry would continue to appeal to the corporatist-leaning Board of Forestry when bureaucrats threatened to block logging plans. The Board of Forestry denied the industry's appeals only after repeated defeats in court during the 1980s and 1990s demonstrated that the *Gallegos* ruling had to be heeded.²⁰

The *Gallegos* and *Arcata* decisions provided the foundation for nearly all subsequent local citizen challenges of harvest plans. The two rulings required that harvest plans fully comply with CEQA, including: the requirements that other relevant agencies be consulted, that feasible alternatives and mitigation be implemented, that the agency make the harvest plans available to the public, and that the agency respond to public comments in a reasoned manner. CDF, the Board of Forestry, and the timber industry resisted these mandates, but, as described below, EPIC and other groups sued to force compliance with the laws and court precedents. It was through these legal channels that local citizens chipped away at the Board of Forestry's corporatist orientation, forcing it to step back from its traditional alliance with the timber industry several times during the late 1980s and 1990s.²¹

EPIC v. JOHNSON: A SUCCESSFUL MODEL

Although the Sierra Club was instrumental in the fights over Redwood National Park and in the 1976 amendments to the Forest Practice Act, and continued to play a major role in California logging politics, the legal campaign to destroy the corporatist traditions of the Board of Forestry was largely driven by a small group of North Coast residents committed to the

²⁰ Barbour, *Coast Redwood*, 189–190. A writ of mandate compels a public agency to correct prior actions not consistent with the law. *Gallegos v. California State Board of Forestry*, 76 Cal. App. 3d 945 (1978).

²¹ In addition to the published court opinions and regulations, Sharon Duggan offers a detailed analysis of codes, laws, and rulings of the 1970s regarding CEQA, the Timberland Productivity Act, and the FPA. She also provides analysis of a few of the subsequent rulings related to defining the laws regulating timber harvesting in California that this article does not cover. See Duggan, "Citizen Enforcement."

conservationism and ecological environmental values set forth by Gifford Pinchot (first chief of the U.S. Forest Service) and decidedly uninterested in state or national politics or citizen groups, except where needed to effect local land management changes. This cadre included Humboldt and Mendocino residents Kathy Bailey (state chair of California Sierra Club's state forestry program and the person responsible for convincing national Sierra to partner with locals on the litigation effort), Sharon Duggan (a native North Coast attorney working in the Bay Area), and other activists who established the Environmental Protection Information Center (EPIC).²²

EPIC was formed in 1977 in southern Humboldt County (approximately 200 miles north of San Francisco along the coast) by residents Robert Sutherland (who changed his name to The Man Who Walks in the Woods), Ruthanne Cecil, and other activists. EPIC was initially an ad hoc group that worked on local environmental issues, but in 1981, EPIC was formally incorporated with a broader set of goals:

- 1) preserve critical old growth forest remnants and the biological diversity they contain;
- 2) reduce the degradation of timberlands through improvement of forest practices (toward sustainability);
- 3) stabilize the local economy through sustainable production in healthy, diverse forests;
- 4) educate the citizenry regarding their public interest in the forests, its intrinsic value, and the avenues of influence available to them through state and federal agencies; and
- 5) channel information on environmental matters of all kind.²³

The local organization from the small town of Garberville (population approximately 2,000) quickly became a major player in logging regulation by aggressively using the citizen suit provisions of CEQA and the Forest Practice Act to challenge Board of Forestry actions. In doing so, EPIC's actions paralleled the legal actions of national environmental groups that increasingly turned to the courts in response to the Reagan administration's decreased enforcement of environmental laws. Unlike the national efforts,

²² See Schrepfer, *Fight to Save Redwoods*, 129–228, for a detailed account of the 1968 and 1978 efforts to create Redwood National Park.

²³ "Organizational History and Goals," undated, Archives of the Environmental Protection Information Center, "EPIC Publications" binder, EPIC offices, Redway, California.



SOME OF THE EARLY EPIC FAMILY MEMBERS. IN ITS EARLY YEARS, EPIC EMBODIED MUCH OF THE EARLY MEMBERS' 1960S COUNTERCULTURE AND POLITICAL IDEALS: AN ORGANIZATION THAT WOULD BE RUN BY THE COMMUNITY, NOT "HOITY-TOITY" MIDDLE-CLASS DONORS, AS THE MAN WHO WALKS IN THE WOODS EXPLAINED TO THE AUTHOR.

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however, EPIC's work was built on a local vision of responsive government and sustainable communities that would produce timber, jobs, and wildlife habitat in perpetuity. However, forestry operations were governed at the state level, and endangered species law at the state and national levels, so the local activists were forced to engage in litigation and politics outside their local region in order to effect local change, just as groups such as the Headwaters Alliance and the Oregon Natural Resources Council (ONRC) were forced to engage the federal courts and the Forest Service to protect local landscapes on federal land during the 1970s and 1980s. Unlike the Pacific Northwest movement, however, nearly all of the national environmental groups chose

not to engage. EPIC drove the litigation strategy, and they often split the bills with the Sierra Club — but only on the insistence of Kathy Bailey and because of her ability to convince the California Sierra Club of the importance of the work.²⁴

Though the locals' goals were broad, they were focused on local quality of life. Bailey, Duggan, Woods, Richard Geinger, and the other local activists involved in the campaign against corporatism were local activists first and foremost, and, as told by Woods, if they could have avoided state and national authorities, they would have. For example, Bailey, Geinger, and Sutherland moved to the North Coast in the early 1970s after burning out in the anti-war movement and the counterculture of the Bay Area. Bailey and Sutherland grew up in the Midwest, and Geinger grew up in the Northeast. They all came from middle-class backgrounds and moved west to be near the natural beauty of the region. After moving to the North Coast to escape politics, each was drawn back in because of the local behavior of timber companies. During the late 1970s, Bailey successfully orchestrated a county initiative to ban the use of Agent Orange on logged-over land. Nearly simultaneously, Sutherland, Geinger, Cecil, and Marylee Bytheriver (a founder of EPIC who assisted as a paralegal in preparing its cases) successfully worked to stop Humboldt timber companies from aerially spraying pesticides on the countryside. As Bailey explained it, she re-engaged in politics locally out of concern for her children's health

²⁴ From "Organizational History and Goals." See Roger W. Findley, et al., *Cases and Materials on Environmental Law*, 6th ed. (St. Paul: Thomson/West, 2003), 688–689. See Durbin, *Treehuggers*, for the story of local Oregonians and Oregon groups that fought to stop logging on federal lands during the spotted owl conflict regarding the implementation of NFMA. According to Woods, the original EPIC bylaws were clear that EPIC was only to work at the local (Southern Humboldt) political arena, on purely local issues. With respect to the Sierra/EPIC relationship: Woods and Bailey both confirmed that the Sierra Club's litigation role was to help fund the litigation and to give the plaintiffs additional clout in front of Superior Court judges. EPIC attorneys and staff crafted and drove the actual litigation. In fact, when I corresponded with the Sierra Club litigation team about tracking down their files on the Headwaters cases, the director of the team told me that the only person at Sierra directly involved with the litigation was Bailey, who was a volunteer organizer, not an attorney. EPIC led the litigation teams, and they sometimes hired lawyers from the Sierra Club Legal Defense Fund, which, despite its name, is not a part of the Sierra Club. SCLDF changed its name during the 1990s to Earthjustice to end the confusion.

and education, and she only really wanted to work on Mendocino issues. Likewise, Sutherland and Geinger were interested in Southern Humboldt watershed, forest, and human health. Duggan was a North Coast native, and her interest in forestry litigation stemmed from a concern about the rapid changes in the landscape and forest health of the North Coast. Duggan grew up while the local timber companies were selling their land to Georgia-Pacific and Louisiana-Pacific, which led to increased industrial timber operations, including greatly expanded clearcuts and the related watershed damages.



ATTORNEY SHARON DUGGAN.

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That their litigation efforts had state and national implications was due to the avenues available to the activists to pursue local change, not because they set out to change state or national law.²⁵

²⁵ Kathy Bailey, interview by author, Philo, California, March 20, 2007; Kevin Bundy, interview by author, April 26, 2007, San Francisco; Sharon Duggan, interview by author, Oakland, April 27, 2007. Locals grew concerned about the state of North Coast forestry during the early 1970s when the Atlanta-based Georgia-Pacific acquired The Union Lumber Company of Mendocino County as well as surrounding family ranches in what locals referred to as an “unprecedented consolidation of land.” See Lynwood Carranco and John T. Labbe, *Logging the Redwoods* (Caldwell, Idaho: Caxton Printers, 1975), 77; David Cross, “Sally Bell Redwoods Protected! Sinkyone Coast Purchased for Park,” *Earth First! Journal* 7, No. 3 (February 2, 1987): 1–4. Richard Geinger, interview by author, Redway, California, March 22, 2007; Paul Mason, interview by author by phone, February 16, 2007; Robert Sutherland, interview by author, Arcata, California, April 22, 2008 (all recordings and handwritten notes in possession of author). Sutherland told me that he only wanted EPIC to work on issues within southern Humboldt County and that he wanted to deal with them in the local arena. However, because timber harvesting on private land involved state regulation, they had to engage state agencies. And, when the state courts and agencies proved to be a dead end, they based their case on federal law (ESA) once the marbled murrelet was designated a threatened species.

EPIC's first lawsuit, *EPIC v. Johnson*, was initiated in 1983, and resulted in a landmark appellate decision that paved the way for much of the environmental community's forestry reform efforts in California, especially in the state's remaining unprotected and privately-owned old-growth forests. The *Johnson* case challenged a 75-acre harvest plan on Georgia-Pacific land in northern Mendocino County, near the Sinkyone Wilderness State Park. The Department of Forestry approved the clearcutting of the Sally Bell Grove, an old-growth redwood grove and the last remaining stand of trees in the immediate area. The grove was situated on a steep slope bound by the Pacific Ocean to the west and clearcuts on the other three sides. Thus, the grove acted as the hill's "keystone" by anchoring the slope's soil and preventing it from wasting into the ocean. The grove also contained a Native American Archeological site. EPIC and the Sinkyone Council prepared to challenge G-P logging plans in Sally Bell Grove throughout the summer of 1983. They prepared an on-the-ground resistance and a legal attack for any logging plans in the Sally Bell Grove. The on-the-ground resistance plan was developed in consultation with the group Earth First!, and it offered the EPIC lawyers the time they needed to get to court when logging began.²⁶

In court, EPIC and the Department of Forestry (CDF) made arguments that were notably similar to those made by plaintiffs and defendants, respectively, in nearly every case dealing with old-growth forests between 1983 and 1997. Sharon Duggan successfully argued that CDF, in approving the plan, had violated three CEQA requirements: first, CDF had not adequately responded to public comments on the harvest plan; second, CDF failed to consider the cumulative impact of the harvests on the hillside; and third, CDF failed to consult with relevant agencies with jurisdiction over the project (in this case the Native American Heritage Commission). CDF did not dispute EPIC's claims. Instead, it argued that, according to the rules, it could consider only the Forest Practice Act when approving plans. Therefore, CEQA's requirements about consultation, cumulative impact, and public comments were irrelevant to Timber Harvest Plans. It appears that CDF and the timber industry were hoping for a judgment that would

²⁶ Environmental Protection Information Center, Inc. v. Johnson, 170 Cal. App. 3d 604 (1985), 624, n. 10 re: "keystone" determination; Cross, "Sally Bell Redwoods," 1-4; Duggan, Geinger, and Sutherland interviews and correspondence with author.



OUT OF THE COURTROOM AND INTO THE WOODS. WHEN EPIC CHALLENGED GEORGIA-PACIFIC AND THE CALIFORNIA DEPARTMENT OF FORESTRY OVER THE SALLY BELL GROVE HARVEST PLAN IN 1983, PROTEST AND DIRECT ACTION PLAYED A CRITICAL ROLE IN THE SOUTHERN HUMBOLDT/NORTHERN MENDOCINO COMMUNITY'S STRATEGY. EARTH FIRST! CO-FOUNDER MIKE ROSELLE (UPPER RIGHT) WAS RECRUITED BY THE MAN WHO WALKS IN THE WOODS (LEFT OF ROSELLE, WITH HEADBAND) TO HELP LOCAL ACTIVISTS ORGANIZE DIRECT ACTIONS TO PREVENT LOGGING ACTIVITY UNTIL EPIC COULD OBTAIN A TEMPORARY RESTRAINING ORDER.

Photo by Debbie Unterman. All rights reserved.

overturn the previous rulings because they made the same arguments as in *Arcata* and *Gallegos*. At the same time, CDF contended that, contrary to EPIC's claim, it implicitly addressed the cumulative effects of its decisions by minimizing the impact of each individual project. That assessment of cumulative impact analysis — coupled with CDF's continued use of the argument that CEQA did not apply to harvest plans — demonstrated the degree of intransigence within the agency. By definition, one cannot analyze cumulative impact without studying past and future plans. The court

ruled for EPIC in 1985, striking another blow to the Board of Forestry's industry-friendly economic development priorities.²⁷

The *Johnson* case provided EPIC with valuable experience, a strong precedent, and successful arguments. EPIC and other citizens used the *EPIC v. Johnson* model with increasing frequency and success. Prior to *Johnson*, there were only two published opinions for cases challenging harvest plans. After *Johnson*, environmental groups would challenge plans every year. But if EPIC members thought the Board of Forestry and the timber industry would take this third defeat at the hands of environmental groups as a signal to reform the Forest Practice Rules and Forestry methodology, they were wrong. CDF and the timber industry would continue to argue they were exempt from CEQA, despite the growing stack of precedents building against that position. Duggan believed that the agency and the industry were hoping they would eventually find a judge or panel that would agree with them, which made sense given their long experience with self-regulation.²⁸

USING THE *JOHNSON* MODEL ON THE DONKEY AGAIN AND AGAIN

Woods was convinced that the North Coast activists needed to continue to combine litigation with direct action in order to "hit the donkey" enough to make it move. Activists had overturned official corporatism in 1971, and they won three important cases during the subsequent fifteen years that reinforced the Legislature's orders that the Board of Forestry end its corporatist traditions which allowed the industry to determine its own harvest practices. After the *Johnson* decision, North Coast activists steeled themselves to break corporatism's back by challenging harvest plan after harvest plan using the *Johnson* model. From 1985 to 1995, the Board of Forestry, EPIC, Sierra Club, and the timber industry jostled repeatedly in court after court over the same issues. What became known as Headwaters Forest became the focal point of many of the battles between environmental activists and corporatism, but the activists challenged harvest

²⁷ See *EPIC v. Johnson* for discussion of EPIC's arguments, CDF's arguments, and the court's analysis of the arguments.

²⁸ Duggan, "Citizen Enforcement," 12 n. 55, cites *Gallegos and Seghesio v. County of Napa*, 135 Cal. App. 3d 371 (1982) as the two previous THP challenges.

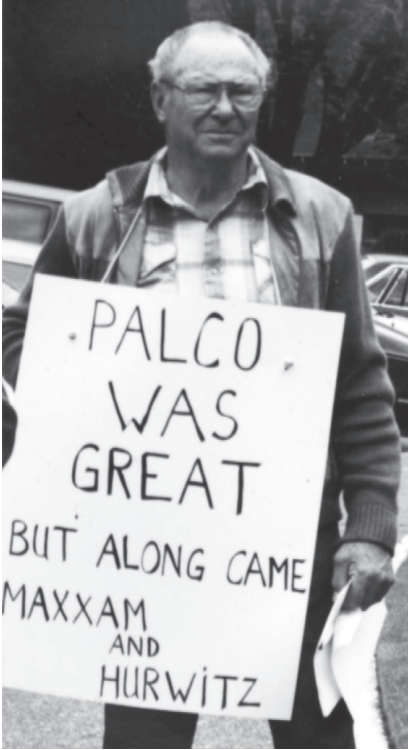
plans all over the North Coast that were rubber-stamped by CDF. The litigation during that period produced three major state precedents and one major federal precedent that drove wedge after wedge between the Board of Forestry and the industry.

MAXXAM I AND II, AND NATIVE SALMON: PUTTING AN END TO RUBBER-STAMPING

The leveraged buyout of Pacific Lumber by Maxxam in 1985 was the key event that propelled Headwaters Forest into the middle of the citizen challenges to California's corporatist tradition. Environmental activists, shareholders, and timber workers all initially reacted negatively to the buyout, creating an under-siege atmosphere in the rural North Coast of California. The Murphy family-run Pacific Lumber was in many respects a model corporate citizen. But perceptions changed after the company was taken over by Texas-based Maxxam Corporation in 1985. The Murphy-run company had sold and donated 20,000 acres of their land for parks, avoided clearcutting since the Great Depression, and left 30–70 percent of the trees on the land by practicing selective logging in old-growth stands.

Despite the “family business” image, by 1975, no investor group owned more than five percent of Pacific Lumber stock, and, by 1985, the company was a full-fledged conglomerate working in real estate, agriculture, cutting and welding, and lumber. However, Pacific Lumber retained its small-town image up to the time of the Maxxam takeover. Maxxam, led by Charles Hurwitz, purchased Pacific Lumber for nearly \$900 million, financed by “junk bond” legend Michael Milken.²⁹ The takeover of Pacific Lumber by Hurwitz, a well-known “corporate raider” that hostilely acquired undervalued companies — such as McCulloch Oil and Simplicity Patterns — and sold off their assets, generated local concern about the future of Pacific Lumber. Specifically, the takeover allowed John Campbell, the executive

²⁹ John Campbell, interview by author, Fortuna, California, April 24, 2008 (recording and handwritten notes in possession of author). The various diversification efforts can be found in the annual reports of The Pacific Lumber Company 1976–1982, Selected Corporate Annual Reports on Microfiche, 1975–1983, Library of Congress, Business Reading Room, Washington, D.C.; Evelyn Nieves, “Lumber Company Approves U.S. Deal to Save Redwoods,” *The New York Times*, March 3, 1999, A1, and “The Headwaters Forest Stewardship Plan: A Citizens’ Alternative to Maxxam Management of Headwaters Forest” (Redway, Calif.: The Trees Foundation, 1997), 20.



THE MORALITY TALE. WHEN MAXXAM ACQUIRED THE PACIFIC LUMBER COMPANY, MANY ACTIVISTS, COMMUNITY MEMBERS, AND JOURNALISTS ATTRIBUTED THE COMPANY'S INCREASED TIMBER HARVESTS AND CLEARCUTS TO THE JUNK BOND DEBT OF THE NEW COMPANY.

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vice president of Forest Products, to implement his long-held desires to reinstitute clearcutting and to harvest the remaining old growth on the property in order to maximize the timber growth rate of the land and to maximize operational efficiency. The new management of the forest drew the attention of local environmentalists, and for the next thirteen years, the conflict between Pacific Lumber and local activists escalated and peaked just before the Headwaters Deal was finalized in 1999. Many local residents feared Maxxam would cut quickly and leave the area without its major employer while devastating its forest land. Earth First! activist Greg King trespassed on Pacific Lumber land to determine the size and quality of the company's holdings. In the process, King discovered a vast old-growth redwood forest in the middle of the property and named it Headwaters Forest because several major streams and rivers originate inside the forest.³⁰

³⁰ Jane Kay, "Last Stand: Fighting for the Tall Trees," *San Francisco Examiner*, December 16, 1995; Elliot Diringer, "Cutting a Deal on Redwoods: A Tangled Tale of Trees, Takeovers and a Texas S & L," *The San Francisco Chronicle*, Sept. 4, 1996, A1; Andy Caffrey, "Partners in Crime: Bill Clinton, Pete Wilson, Wall Street and the Death of the Redwood Forest," *Save Headwaters Forest Report*, 3; "Deal Saves Giant Redwoods: 2,000-year-old Forest on Pacific Coast to be Made a Preserve," *The Gazette* (Montreal, Quebec), March 3, 1999, A14; Nieves, "Lumber Company" and "Spring Headwaters Campaign," *Headwaters Updates* 30 (Winter 1998), 5; John Campbell, interview with author, Fortuna, California, April 24, 2008. During our interview, Campbell made it

Between 1987 and 1993, both EPIC and local Earth First! activists ratcheted up their efforts. Court after court found the Board of Forestry guilty of operating under a de facto policy of automatically approving Timber Harvest Plans without considering the plans' relationship to the Forest Practice Act or CEQA. The policy was a product of a century of corporatism during which the Board of Forestry's primary duty was to facilitate timber harvests. Especially on Pacific Lumber land, Earth First! activists kept constant tabs on logging activity, as locals had done during the Sally Bell Grove conflict, and they staged dramatic direct actions and protests, most notably Redwood Summer in 1990 and the tree-sits and near constant occupations of the Headwaters Forest old-growth groves. Tensions on the North Coast grew as logging was delayed, activists swarmed the county, the spotted owl conflict raged to the north, and as EPIC won in court after court. The three major precedent-setting EPIC cases during this time period — *EPIC v. Maxxam I*, *EPIC v. Maxxam II*, and *Californians for Native Salmon and Steelhead Association, et al. v. California Department of Forestry (Native Salmon)* — forcefully chipped away at that corporatist tradition and strengthened the role of citizens as private attorneys general. Then, in 1994, the California Supreme Court delivered a crushing blow to corporatist autonomy and the legal argument that CEQA did not apply to harvest plans in *Sierra Club and EPIC v. Board of Forestry*.³¹

In 1987, the ruling in *Maxxam I* bolstered the court's *Johnson* decision that CEQA rigorously applied to harvest plans and the decision further discredited Forestry and its practices. EPIC asked for writs of mandate against three Pacific Lumber old-growth harvest plans (two within Headwaters

clear that the Maxxam takeover did not radically alter the forest management plans of Pacific Lumber; rather, the takeover made it easier and more urgent for Campbell to increase old-growth logging activity.

³¹ Environmental Protection Information Center, Inc. v. Maxxam Corp., Humboldt Superior Court No. 79879 (1987); Environmental Protection Information Center, Inc. v. Maxxam Corp., 4 Cal. App. 4th 1373 (1992); Californians for Native Salmon and Steelhead Association, et al. v. California Department of Forestry, 221 Cal. App. 3d 1419; Sierra Club, et al. v. State Board of Forestry, 7 Cal.4th 1215. The best sources regarding the direct action activity on North Coast are Bari, *Timber Wars*; Dunning, *From the Redwood Forest*; Hill, *Legacy of Luna*; Darryl Cherney, interview with author, Redway, California, April 23, 2008; and Alicia Littletree, interview with author, Ukiah, California, May 20, 2008 (all recordings and notes in possession of author).

Forest) because the plans lacked cumulative impact studies and mitigation alternatives. CDF tried a new argument in this case; it argued that its hands were tied because, even though the harvests would cause significant environmental harm, the land had been zoned for timber production by the Timber Production Act, which, according to CDF, superseded the court's *Johnson* ruling. In Humboldt County Superior Court, Judge Frank Peterson ruled for EPIC and found that CDF had "rubber-stamped" the plans because the plans were approved before they were completed. Additionally, the judge found that CDF intimidated Fish and Game biologists to prevent them from filing non-concurrence opinions that objected to the plans. Fish and Game opposed the plans because they did not contain any scientific information about the presence of species of concern, like the marbled murrelet, in the harvest areas.³²

By 1987 a pattern was developing: EPIC and Sierra Club would challenge old-growth harvest plans based on the *Johnson* model, local Earth First! activists would stage direct actions to delay logging activity, and Pacific Lumber would experiment with defense arguments. For example, *Maxxam II* challenged two more 1987 Pacific Lumber harvest plans within Headwaters Forest and one Simpson Timber plan. Simpson Timber withdrew its plan, but Pacific Lumber fought the writs of mandate. The company abandoned the unsuccessful agency arguments regarding CEQA's irrelevance to harvest plans and the superseding authority of the Timber Production Act. Instead, the company challenged the scientific analysis that its land was important for species of concern. Pacific Lumber argued that Fish and Game should not have concerned itself with the species on its land because the species were not dependent upon old-growth redwood groves. The company also claimed that the state already owned enough redwood land to maintain viable populations of species that were dependent on old-growth redwoods.

In addition to introducing a new industry argument, *Maxxam II* marked the initial, if seemingly reluctant, split between the timber industry

³² EPIC v. Maxxam, Humboldt Superior Court No. 79879, Aug. 13, 1987, Peterson, J., pp. 2–4. The private attorney general doctrine was first used by Judge Jerome Frank in *Associated Indus. v. Ickes*, 134 F.2d 694, 704 (2d Cir. 1943) to award attorney's fees to a person "vindicating the public interest." Many environmental laws passed as a part of the new social regulations include citizen suit provisions.

and the Board of Forestry. The trial judge ruled against Maxxam and again accused CDF of “rubber-stamping” and intimidation. The appellate court also disagreed with the company’s argument, but the case was dismissed in 1992 for three reasons, two of which were victories of a sort for EPIC, and one a symbol of the determination of Pacific Lumber to carry out its new timber regime: 1) Pacific Lumber felled the trees in one of the harvest areas between March 1988 and May 1988 — the date EPIC obtained a preliminary injunction; 2) CDF adopted emergency regulations covering old-growth timber plans, marbled murrelet and northern spotted owl habitat, and cumulative impact analysis; and 3) EPIC and Sierra Club obtained an injunction on the harvest plan for Lawrence Creek (the second contested plan) in 1989 via *Sierra Club v. State Board of Forestry* (discussed in the next section). The appellate court, while dismissing the case, recognized the influence of citizen groups on the Board of Forestry’s behavior, writing:

The record . . . leaves no doubt that environmental litigation, such as EPIC’s Preliminary Injunction in this case, played an important role in bringing about changes in departmental policies. To this extent, the issue of mootness is a product of EPIC’s own success.

The judge then strengthened EPIC’s position as a private attorney general by forcing Pacific Lumber to pay EPIC’s attorney fees. The company was able to log in the disputed area, but the pressure brought on the Board of Forestry by the litigation caused the agency to stray from the hardline position that CEQA did not apply to Timber Harvest Plans as evidenced by the agency’s creation of the new regulations without a direct court order. The new regulations played a key role in breaking down development-focused corporatism because the Board of Forestry responded to citizens and courts, not to the wishes of the timber industry, and the rules recognized the Board of Forestry’s responsibility to non-economic forestland resources.³³

³³ *Environmental Protection Information Center, Inc. v. Maxxam Corp.*, 4 Cal. App. 4th 1373 (1992). The marbled murrelet regulations are found in Cal. Code Regs., tit. 14, §§ 895.1, 912, 919.13, and 919.14. The spotted owl regulations are CCR, tit. 14, §§ 919.6(d)(1), 919.9, and 919.10. The cumulative impact regulations are in the FPR, §§ 985.1, 898, and 912.9.

Protecting Headwaters Forest was not EPIC's sole project.³⁴ In fact, one of the non-Headwaters cases filed by EPIC, *Native Salmon*, left the strongest precedent of the cases concluded between 1987 and 1993. In this case, EPIC and friends challenged a 1988 Eel River Sawmills harvest plan because CDF failed to analyze cumulative impact, and failed to respond to public comments. Sixty-five additional plans were added to the suit, and EPIC argued that the failure to fulfill CEQA requirements was a de facto CDF policy. Eel River Sawmills withdrew its plans, and before the case went to trial, CDF approached EPIC and Californians for Native Steelheads to negotiate a settlement. An agreement was signed on September 23, 1993. CDF agreed to further rule changes that put the agency in compliance with CEQA regarding cumulative impact analysis, mitigation, and public comments. The appellate decision opened the door for environmental groups to challenge policies wholesale, not just individual harvest plans, and the settlement forced written changes in CDF practices that EPIC had been fighting for over a decade to achieve.³⁵

SIERRA *v.* BOARD OF FORESTRY: THE DONKEY IN THE CALIFORNIA SUPREME COURT

In 1994, the California Supreme Court sided once and for all with the citizen groups with respect to the relevance of CEQA to timber operations on

³⁴ During my interviews with 1980s and 1990s EPIC staff members Richard Gering (staff forester), Sharon Duggan (EPIC attorney), and Kevin Bundy (EPIC media spokesman during the mid-1990s), each of them expressed the anxiety EPIC felt about the size, direction, and scope of the Headwaters conflict, and each of them stated that EPIC wanted to continue its challenges to CDF even while Headwaters work consumed ever-more time and energy.

³⁵ See "Settlement Agreement, CDF, Californians for Native Salmon and Steelhead Association, EPIC, and Fred 'Coyote' Downy," unprocessed EPIC Archives, Eureka, California. *Native Salmon*, Humboldt Superior Court No. 83329 (1989), was dismissed as moot when Eel River withdrew its harvest plans. EPIC appealed the dismissal, 221 Cal. App. 3d 1419 (1990), and the case was reinstated, prompting CDF to negotiate with EPIC. The other two cases settled were *EPIC v. CDF*, Humboldt Superior Court No. 92DR0005 (1992), which resulted in an agreement with Eel River Sawmills protecting Tom Long Creek, and *Coastal Headwaters Assn. and EPIC v. CDF*, Mendocino Superior Court No. 68285 (1995), where the trial court ruled in favor of CDF, but Save The Redwoods stepped in and bought Goshawk Grove from Eel River Sawmills. See "Sanctuary Forest Moving Forward," *Branching Out*, affiliate newsletter published by the Trees Foundation (Winter 1998–99): 3.

private land. In 1988, Pacific Lumber remained confident in the corporatist tradition of the Board of Forestry, but *Sierra Club v. State Board of Forestry* seriously damaged the allegiance between the board and industry. *Sierra Club v. State Board of Forestry* challenged two more Pacific Lumber plans in the Lawrence Creek area of Headwaters Forest and became EPIC's second major precedent-setting case and the fourth major blow to California's corporatist timber regime. CDF initially rejected the two Pacific Lumber harvest plans because they did not include marbled murrelet surveys. Pacific Lumber, like Chenoweth Lumber in 1976, appealed to the Board of Forestry, claiming it did not have to provide any survey information because the rules did not specifically require the surveys. Following the tradition of maximum production and deference to the industry, the Board of Forestry overruled its Department of Forestry and approved the plans. EPIC and Sierra Club filed for a writ of mandate to rescind the board's approval of the plans. On March 20, 1989, the board convinced Judge John Buffington that the harvest plans would not result in any significant impact on the environment, and Buffington denied EPIC's writ of mandate. EPIC and Sierra Club appealed the decision, and after the appellate court overturned Buffington's ruling, the board withdrew its support of Pacific Lumber in the case. The Board of Forestry further distanced itself from corporatist tradition when it issued the new regulations that caused the dismissal of *Maxxam II*. The two board actions demonstrated the success of citizen litigation in destabilizing the traditional relationship between the board and industry.³⁶

When the state Supreme Court ruled against Pacific Lumber, it delivered industry independence a staggering blow. As it ended one conflict, the court escalated another when it increased the legal demands on the industry and the board to protect non-timber forest resources. Like previous lower courts, the court ruled that the Board of Forestry had to comply with CEQA and the Forest Practice Act alike and that the board had the authority to require new information from timber companies (such as wildlife surveys) that the Forest Practice Rules did not explicitly require but that the Department of Forestry deemed necessary to comply with CEQA guidelines. In fact, the court further underscored the board's non-timber responsibilities when it argued that *not* requiring timber companies to submit enough information to assess

³⁶ *Sierra Club, et al. v. State Board of Forestry*, 7 Cal.4th 1215 (1994).

and *prevent* environmental damage violated CEQA. The victory for EPIC and Sierra Club forced the Board of Forestry to further reform its practices regarding ancient forests, and forced it to recognize its responsibilities for old-growth-dependent species. During the ten years after *Johnson*, citizen litigation exposed and discredited the de facto corporatist regime, destroyed the autonomy the board and the industry once enjoyed, and drove a wedge between the industry and the agency. However, legal battles over non-timber resources escalated because the agency, and especially the timber industry, yet again failed to embrace the ruling.³⁷

OWL CREEK: ENDANGERED SPECIES AND NATIONALIZATION OF THE CAMPAIGN

In 1997, the U.S. Supreme Court refused Pacific Lumber a writ of certiorari in the *Marbled Murrelet* case, reinforcing the North Coast activists' twenty-plus-year fight to include protection of habitat and ecological health in private forest management practices. The fight over corporatism was played all over the North Coast, but the fight over non-commercial responsibilities was mainly fought in the Headwaters Forest arena, and it was a fight citizen groups largely won. The federal court case reinforced the Board of Forestry's obligation to citizens and non-timber forest values, revised endangered species case precedent, and unintentionally drove President Clinton, Governor Wilson, and Charles Hurwitz to the negotiating table in an attempt to end the conflict over Headwaters Forest. EPIC filed suit in federal court because three of changes that had occurred in Northern California. First, the murrelet was protected under both the California and federal Endangered Species Acts. Second, Pacific Lumber seems to have decided that it could no longer count on the Board of Forestry to protect its interests so it became more aggressive and independent with its court actions. And third, state judges began to rule against EPIC.

The listing of the marbled murrelet as a "threatened" species on October 1, 1992 proved to be vital to EPIC's challenge of Pacific Lumber's old-growth harvesting plan. The state case challenging an old-growth harvest plan in the Owl Creek Grove of Headwaters Forest floundered in a sea of competing

³⁷ *Id.*

motions and conflicting rulings, especially after the murrelet's federal status changed and Pacific Lumber worked feverishly to log the area. For example, on November 2, Superior Court Judge Morton Colvin rejected Pacific Lumber's motion to dismiss that case due to what the company perceived as Judge William Ferroggiaro's anti-company bias. However, Pacific Lumber simultaneously persuaded a court clerk to schedule a hearing with a visiting judge on a motion to dismiss the case, and on November 22, despite Judge Colvin's prior rejection of Pacific Lumber's dismissal motion, visiting Judge Leighton Hatch dismissed the case.³⁸

Then the conflict turned even uglier. On November 24, 1992, the California Department of Fish and Game spoke to Pacific Lumber and told them not to resume logging in Owl Creek without complying with the federal Endangered Species Act, and the company agreed to consult with the U.S. Fish and Wildlife Service before logging. With Earth First! activists conducting nightly hikes to Owl Creek, Pacific Lumber resumed logging on November 28, Thanksgiving weekend, without consulting Fish and Game or Fish and Wildlife. It was the first time in the sixteen-year career of Pacific Lumber's chief timber operations manager, Dan McLaughlin, that the company logged over Thanksgiving, and he asserted that Owl Creek was the only area harvested. The next day, Fish and Wildlife sent EPIC a letter informing it that the harvest constituted a "taking" in violation of the Endangered Species Act. The agency had told Pacific Lumber before November 28 that the company's partial surveys indicated murrelet occupation of Owl Creek. On December 1, 1992, the California appellate court issued an emergency stay of logging operations in Owl Creek.³⁹

³⁸ The marbled murrelet listing is 50 CFR Part 17, Federal Register 57, No. 191 (October 1, 1993), Rules and Regulations section RIN 1018-AB56. See EPIC brief before California Court of Appeal A059797 requesting a stay, December 1, 1992, pp. 4–8, unprocessed EPIC Archives, Eureka, California.

³⁹ *Marbled Murrelet v. Pacific Lumber*, C-93-1400, Feb. 25, 1997, 36, unprocessed EPIC Archives, Eureka, California. See Department of Interior memo 1-1-92-TA-81, Nov. 29, 1992, from Wayne White, FWS Field Supervisor, to EPIC attorney Mark Harris, unprocessed EPIC Archives; *EPIC v. Board of Forestry*, Emergency Stay Order A059797, Dec. 1, 1992; cert. denied by California Supreme Court S031969, May 20, 1993, Lucas, C.J.; Panelli and Baxter, JJ., concurring, unprocessed EPIC Archives; Alicia Littletree interview and map of Owl Creek hikes from Littletree's personal papers, Ukiah, California (copy of map in possession of author).

On April 16, 1993, EPIC filed suit against Pacific Lumber, the Department of Forestry, the Board of Forestry, Fish and Game, Fish and Wildlife, and Secretary of the Interior Bruce Babbitt in federal court, arguing that all the parties were responsible for allowing “harm” to a listed species in violation of section 9 of the Endangered Species Act. EPIC filed suit in federal court because they were frustrated about the state court proceedings and Pacific Lumber logging activities. Additionally, Macon Cowles — the lead environmental attorney in the Exxon Valdez oil spill litigation — suggested that EPIC sue in federal court. EPIC attorney Sharon Duggan agreed that the claimants would have a better chance in federal court because the Humboldt County judges were growing weary of having EPIC and Pacific Lumber in their courtrooms, and the Superior Courts did not have the resources or time to thoroughly review the massive administrative records compiled in the cases.⁴⁰

The cases against the agencies were dismissed later in 1993, and the case against Pacific Lumber was tried in August and September 1994. On February 27, 1995, Judge Louis Bechtle of the Ninth Circuit Court of Appeals placed a permanent injunction on the Owl Creek harvest area and found that “EPIC has proven, by a preponderance of the evidence, that marbled murrelets are nesting in THP-237” (the area of Timber Harvest Plan 237 at issue) and that Pacific Lumber had tried to minimize its detections of murrelets by neglecting PSG protocol, intimidating surveyors, sending doctored-up data sheets to state and federal agencies, and intimidating government witnesses.⁴¹

The Ninth Circuit upheld the decision on May 7, 1996, and the U.S. Supreme Court denied Pacific Lumber’s appeal on February 18, 1997. The permanent injunction was a landmark victory for EPIC, and the ruling became the first time the Endangered Species Act was used to stop logging on private land. The Ninth Circuit opinion also broadened the *Palila* standard for “harm” and “harass.” The ruling declared that “reasonable certainty” of “imminent” injury or death, not the discovery of actual injury or death — the standard the *Palila* cases established — was enough to invoke an injunction on a project. The Endangered Species Act gave EPIC

⁴⁰ Duggan interview; *Marbled Murrelet v. Pacific Lumber*, C-93-1400-FMS slip op. at 12 (N.D. Cal., Feb. 2, 1994), unprocessed EPIC Archives, Eureka, California.

⁴¹ *Marbled Murrelet v. Pacific Lumber*, 880 F. Supp. 1343, 1360 (N.D. Cal. 1995).



EPIC ATTORNEYS WITH PHOTO OF MARBLED MURRELET AFTER VICTORY IN *MARBLED MURRELET V. PACIFIC LUMBER* (1995), U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO; LEFT TO RIGHT: MARK HARRIS, SUSAN O'NEILL, STEVE CRANDALL, MACON COWLES.

Unknown photographer. All rights reserved by the Environmental Protection Information Center.

grounds to argue substantively and obtain permanent protection (rather than just forcing CDF to review its decisions). By doing so, EPIC and the federal courts sent a strong message to the Board of Forestry and to the timber industry that it could not take their responsibilities for non-timber forest values lightly.⁴²

The post-injunction legal strategy of Pacific Lumber led the Clinton administration to significantly alter Endangered Species Act implementation

⁴² *Marbled Murrelet v. Babbitt*, 83 F.3d 1060 (9th Cir. 1996); cert. denied, 519 U.S. 1108 (1997). See Salzman, *Environmental Law and Policy*, 267, for a brief discussion of the precedent-setting nature of *Marbled Murrelet v. Pacific Lumber*.



HIGH UP IN HEADWATERS FOREST.

Photo by the author. All rights reserved.

procedures and led directly to the public purchase of part of Headwaters Forest. After the permanent injunction on Owl Creek was finalized, Pacific Lumber filed a takings suit against the government, and the Clinton administration quickly decided to negotiate with Hurwitz and other land owners rather than fight takings suits or risk congressional action against the Endangered Species Act. In *Lucas v. South Carolina Coastal Council*, the U.S. Supreme Court ruled in 1992 that an injunction *could* result in a “take” of private land *if* the injunction prevented the owner from making *any* use of its land.⁴³ Hurwitz was willing to bet that he could convince the court that its *Lucas* ruling could apply to a Timber Harvest Plan, so it filed *Pacific Lumber v. United States* in May 1996. Additionally, the Republican-led Congress was threatening action to weaken Endangered Species Act protections. On September 28, 1996, the

⁴³ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

Headwaters Deal was signed, authorizing the California Legislature and Congress to purchase more than 7,000 acres of Headwaters Forest, allowing Pacific Lumber to file a Habitat Conservation Plan for the rest of its land, and dismissing the takings suit against the federal government. Thus, a trend began. The 1982 amendments to the Endangered Species Act permitted landowners to negotiate Habitat Conservation Plans with the federal government to accelerate species recovery and to avoid protracted litigation. The plans allow for some development of endangered species habitat so long as it was accompanied by a fifty-year plan to add additional habitat. From 1982 to 1994, however, only thirty-nine plans were issued. Between 1994 and 1998, more than 230 such plans were issued, including the Headwaters Deal negotiated with Pacific Lumber.⁴⁴ While most environmental groups viewed the agreement as insufficient to protect the ancient forest ecosystem, the case presented the Board of Forestry with a strong statement about the need to change its traditional ways of doing business.

The North Coast Redwood Wars were not nearly over in 1996, despite the resolution of the federal court cases. EPIC and North Coast Earth First! opposed the deal, and both groups continued their fights: EPIC fought to protect more old growth and to complete the destruction of de

⁴⁴ Findley, *Cases and Materials*, 970–971, 982. Also, John Campbell interview; Campbell commented on how the takings suit his company filed against the United States made Feinstein and Clinton eager to negotiate rather than have the Endangered Species Act “turned on its bottom.” Additionally, Paul Mason phone interview with author, March 12, 2007 (handwritten notes in possession of author). Mason discussed the fact that Senator Dianne Feinstein was eager to negotiate with Maxxam in order to end the conflict and prevent the Gingrich Congress from more aggressively pushing Endangered Species Act reforms. The 1982 amendments to the Endangered Species Act created § 10a, permitting the government to issue an Incidental Take Permit for development projects that would harm some members of an endangered species in exchange for a fifty-year Habitat Conservation Plan designed to increase population numbers overall. Section 10a was designed to provide land owners incentives to conduct good stewardship and keep ESA conflicts out of court. See U.S. Fish and Wildlife Service, *Status of Habitat Conservation Plans* (Washington, D.C.: U.S. Government Printing Office, 1997). Additionally, see Shi-Ling Hsu, “The Potential and Pitfalls of Habitat Conservation Planning under the Endangered Species Act,” *Environmental Law Review* 29 (October 1999): 10592–10601; *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); and *Pacific Lumber Company v. United States*, 96-257L (Fed. Cls.).

facto corporatism and the related resistance to managing private land for timber and non-timber resources. Earth First! fought to stop all logging in the old-growth groves via direct action. Famously, Julia Butterfly Hill sat in an ancient redwood for two years to protest the logging of old growth not included in the deal. Pacific Lumber filed for bankruptcy in 2007. And, in 2008, the California Supreme Court sided with EPIC in their challenge to the Sustained Yield Plan associated with Pacific Lumber's Habitat Conservation Plan.⁴⁵ In 2009, corporatism may have been on the decline, but the fate of Headwaters Forest was still up in the air.

CONCLUSION

To be sure, national institutions played a large role in the development of the environmental movement and federal environmental politics. The National Resource Defense Council, Sierra Club, Wilderness Society, State Public Interest Research Groups, and others helped push the major environmental laws of the 1970s through Congress, then watchdogged the agencies charged with executing the new laws. Business associations lobbied and litigated to ensure that the laws and regulations did not unduly hinder their operations.

But the California forestry battles were largely a local affair that involved local activists, with local goals, who used the tools available to force changes in local land management. The local history of the redwood litigation demonstrates two often-neglected features of postwar environmental politics: 1) the drive to change traditional institutional arrangements in order to accommodate specific local environmental goals, and 2) the watchdog tactics local environmental activists use to ensure the implementation of environmental laws. Working at both the national and state levels, citizens helped guide the development of the modern environmental protection regime by using their deputized status in court to clarify definitions, obligations, and rules. California's citizen groups also focused on transforming the institutions charged with managing local landscapes. The legal history of citizen challenges to the California Board of Forestry from 1969–1999 demonstrates a sustained interest in

⁴⁵ *Environmental Protection and Information Center v. California Department of Forestry and Fire Protection*, 44 Cal.4th 459 (2008).

conservation methodology as well as ecology, human health, and aesthetics. As Adam Rome pointed out in *Bulldozer in the Countryside*, conservationism was not cut off from modern environmentalism after World War II.⁴⁶ Sharon Duggan, Kathy Bailey, Woods, Richard Geinger, and the rest of the EPIC and California Sierra Club activists were committed to using their citizen attorney-general powers not only to protect endangered species, old-growth ecosystems, and human health, but also to force the timber industry and the state government to embrace more sustainable forest practices for their local communities. The byproducts of their efforts were the sweeping changes to state governance, forestry regulations for private land, and the implementation of the federal Endangered Species Act.

The center of gravity of environmental history has been shifting downward in recent years. Most early environmental historians focused on the sweeping national trends of postwar environmentalism and on the importance of industry, of national writers like Rachel Carson and Paul Ehrlich, and of the creation of the modern environmental protection regime. Robert Gottlieb and Adam Rome, among others, pushed the field to better consider on-the-ground environmentalism in the suburbs and urban areas. And, even though historians attend to local environmental politics, a D.C.-based narrative of modern environmental history continues to dominate policy and political history classrooms, as well as the popular media.

Local environmental activists in northern California took cues from national trends and events, yet forged their own path and local vision. Actions against private property set them apart from the national groups, which kept their distance from local activists so as not to jeopardize their bargaining positions inside the Capitol Hill Beltway. EPIC's goal was to change governance and timber practices on the North Coast alone, but they were forced to challenge state and national agencies, and thus political arrangements outside of the North Coast became collateral damage of the Redwood Wars. In order to more fully understand the development of the environmental movement and environmental politics, we need to examine the ways local people challenged tradition and forced state and

⁴⁶ Rome, *Bulldozer in the Countryside*, 8–9.

national institutions to adjust their actions the way the Board of Forestry, the California Legislature, Congress, and the Clinton administration did with respect to EPIC's court strategy.

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