

**TRANSCRIPT**

**INTERVIEWEE:** Mary Van Kerrebrook

**INTERVIEWER:** David Todd

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**Google Voice** [00:00:00] This call is now being recorded.

**David Todd** [00:00:04] Okay. Well, you're so nice to do this. And you're so prompt. Gosh, you get the award for being on the button.

**Mary Van Kerrebrook** [00:00:14] Right. Well, I'm either prompt or hopelessly late. So, yeah. This is this is one of the former.

**David Todd** [00:00:21] Well, I feel fortunate. Good timing and a wonderful person to talk to. So as you know, I I did push a button to record this and I feel like I should explain a little bit about what we're going to undertake and make sure I have your blessing. So if you don't mind, I'd like to just kind of recite a little bit of an explanation here.

**David Todd** [00:00:46] So with your approval, we'd like to record this interview for research, educational work on behalf of the Conservation History Association of Texas, a book and a Web site for Texas A&M University Press, and for an archive at the Briscoe Center for American History at the University of Texas at Austin. And you would, of course, have equal rights to use the recording. But that's our plan. And I've wanted to make sure that would be all right with you.

**Mary Van Kerrebrook** [00:01:18] Yes.

**David Todd** [00:01:20] Oh, good. Good.

**David Todd** [00:01:22] Well, then let's let's get started. Maybe I can say a few words about where and when and who. It is May 16th, 2020. And we are conducting an interview with Mary Van Kerrebrook, an attorney, a founder of the Katy Prairie Conservancy, a board member of the National Wildlife Federation. She is based in Houston, although this interview is being called by telephone. And today I think we're going to talk mostly about her role and work to save the red cockaded woodpecker in east Texas. And with that brief introduction, I though we might get into it.

**Mary Van Kerrebrook** [00:02:08] Sounds good.

**David Todd** [00:02:12] All right. Well, so I'd understood that you had been engaged in some of this litigation in the 1980s and possibly during the appeal that happened in, I guess, '93, that regarded management of the forests in East Texas, particularly national forest lands, to try to protect the woodpeckers. Is that roughly accurate?

**Mary Van Kerrebrook** [00:02:41] Yes. The work that I did in the 80s and that was a around the Forest Service's appeal of the Red Cockaded Woodpecker injunction. And those claims were tried alone. And then subsequently the claims under the National Forest Management Act were tried. And that decision also went up on appeal to the Fifth Circuit in the 90s, and I worked on that appeal.

**David Todd** [00:03:18] OK. Well, you know as I think we discussed in e-mails before we settle this, conducted this interview, we don't want to get too much into, you know, the details of the suits themselves, but more about what they might have meant to you. But could you just sort of walk us through the bare-bones outline of what the cases involved and what some of the issues were that were being discussed?

**Mary Van Kerrebrook** [00:03:50] Well, surely. So Ned Fritz had brought this suit originally around a variety of claims related to the Wilderness Act, NEPA, the Endangered Species Act and the National Forest Management Act. And in the midst of that, a Forest Service study turned up that predicted the looming extirpation in Texas of the endangered red cockaded woodpecker.

**Mary Van Kerrebrook** [00:04:29] So at that point, the claims that went to trial were just of the Endangered Species Act claims. I believe that the Forest Service biologist was predicting that the red cockaded woodpecker would be gone from Texas by something like 1990 or the early 1990s, if clearcutting continues.

**Mary Van Kerrebrook** [00:04:54] And so I was not involved in the trial, of either of the trials, but I was very deeply involved in the appeals.

**Mary Van Kerrebrook** [00:05:06] I had just gotten out of law school when the 1988 appeal was filed. Well I've been out for maybe a year and a half. And so I was kind of doing the the low-level associate work with Ned doing of course all the strategizing and outlining and and so forth. And then I did do the majority of the work around the National Forest Management Act appeal when Ned's health was declining and he really didn't have the time or resources to to really spearhead that a few years later.

**Mary Van Kerrebrook** [00:05:59] And for me, the the great opportunity and the thing I'll always treasure was the ability to work with Ned directly, and I just learned from him not only about, you know, environmental litigation generally, but about strategizing around major environmental issues. And he was, he was unique.

**David Todd** [00:06:38] For those of us who who might be listening to this or reading a transcript of this interview, could you explain a little bit about Ned Fritz, since he's pretty central to these cases and the effort to protect the woodpecker.

**Mary Van Kerrebrook** [00:06:52] Surely. Well, Ned was really the the patriarch of the environmental movement in Texas. He founded a lot of organizations, of which the Texas Committee on Natural Resources, now, Texas Conservation Alliance was, was one and he was a lawyer by training and SMU law school graduate and very successful. He did a lot of groundbreaking work in relation to consumer rights vis a vis banks. And he was just relentless. I mean, I would never like to be adverse to Ned on anything. But he really also had a deeply spiritual connection with nature. And it was always such a such a treat to go out into the forest with him. He deeply believed that just sitting and briefing these issues wasn't

sufficient, that you couldn't really engage with, with the issues unless you spent a lot of time in the forest. And I mean, he was old by the time I met him but he was spry and he really got around. And on the times when we met to tour, say, a selection management forest, it was always a struggle for me to keep up with him, although I was probably a third of his age or less at the time. But he was often very generous with his time and thoughts and very supportive and very, very grateful. Although I did have occasion to wonder later if there was anybody else who would have even considered doing what I did because it was so grueling, you know. And so, yeah, I don't know that there was anything special about me except the fact that I was willing to help. But I feel very privileged to have been able to do that.

**David Todd** [00:09:20] Thanks so much for for telling you about Ned. Gosh, certainly a big name and a formative person in so much of Texas conservation. I think when you were first laying out the course of this litigation, you explained that there was a study that the Forest Service biologists came out with that indicated that the red cockaded woodpecker was in rapid decline and maybe headed towards extinction in Texas. Can you sort of speculate a little bit about what was happening to the woodpecker that was causing its decline?

**Mary Van Kerrebrook** [00:10:09] Well, surely. So for a long time at the Forest Service did not a clearcut under the Organic Act of the late 19th century. And then in the 1960s, the early 1960s, they started at massive clearcutting of national forests for timber production, not just in Texas, but throughout the southern United States, Southeast United States, and everywhere, really, that there were national forests. And the timber industry assumed, as happens, an outsized role in Forest Service decisions. And, you know, clearcutting, as you know, is the practice of coming in and just removing all of the trees in a stand. And a stand is just a defined geographic area that's been, you know, plotted out for the purpose of harvesting. The Forest Service did at least theoretically use two additional variants of clearcutting - seed tree and shelter wood cutting. But those were essentially just two-stage clearcuts. You know, you'd leave a couple of trees in to, you know, theoretically reseed the area and then come in a year or two later and cut down the rest of the mature trees.

**Mary Van Kerrebrook** [00:11:48] So red cockaded woodpeckers are a little tiny bird. It's very hard to see them because they're shy and sort of people-adverse and they require a very specific kind of habitat, which is old growth pines, which have a disease that softens, doesn't kill the tree, but it softens the wood and makes it easier for the red cockaded woodpeckers to excavate. And in order to have these characteristics, the pines have to be quite old. You know, 100 to 120 years old.

**Mary Van Kerrebrook** [00:12:35] So, of course, that brought, this little bird in to come into jeopardy when clearcutting was taking place all over the forest. And so the population declined very, very precipitously.

**Mary Van Kerrebrook** [00:12:58] There were a couple of Forest Service biologists involved, but the main one was a guy named Richard Conner. And in hindsight, I imagine he was subjected to all kinds of pressure by his employer. But that he, he wrote a a draft report that looked at the decline in the woodpecker's population from 1983 through 1987 and concluded that the bird was in great danger of extirpation by, I believe, around 1990.

**Mary Van Kerrebrook** [00:13:43] So that, that report, of course, since it came from the agency and, given the degree of deference that's accorded to federal agencies in these kinds of lawsuits, it was really central to the proceedings. There's plenty of other testimonies from other great biologists about what was going on. But, you know, I think that the linchpin of the

trial court's decision and the things that the Forest Service really could not overcome on appeal was the fact that its own biologists had said, you know, this bird is about to die out because of the Forest Service timber management practices.

**David Todd** [00:14:39] And so you think that those biologists and others who, I guess submitted testimony, thought that it was largely this clearcutting and seed tree and shelter tree management, that was causing the problems? Do you think that there was also any role for some of the salvage logging that was happening because of all the Southern pine bark beetles?

**Mary Van Kerrebrook** [00:15:10] Oh, yes, yes, absolutely. And that was, I mean, that that is a form of clearcutting. Right. So it's it's kind of another piece of the same picture. And Ned certainly felt that the Southern pine beetle infestations in one, and this part of that was totally borne out by the scientists, as you move away from a diverse forest towards a monoculture. The, it just really amplifies the opportunities for, you know, pests that live on that, the type of plant that is now in a monoculture. And also, of course, the Southern pine beetles are, you know, food for red cockaded woodpeckers. So had had those, I really think that Ned was absolutely correct in his belief that, that all those salvage cuts were really just about more timber harvesting and they didn't make things better. I mean, the beetles, and this was more something that came up, you know, in the later litigation. The initial appeal and the initial trial were all about timber management and mostly centered around clearcutting. But, yeah, the Forest Service had really, really exacerbated the problems with Southern pine beetles, and Ned certainly felt like, and I believe that he was correct, in thinking that all of those salvage harvests were just more and more sops to the timber industry.

**David Todd** [00:17:16] Something else I've read, I'd love to hear your thoughts about, is that some folks feel that the fire suppression in the woods may have, you know, favored other kinds of timber that you weren't really good habitat for the red cockaded woodpeckers, that the woodpeckers, you know, preferred these old pines that were pretty resistant to fire. Do you think that was a factor or not too much?

**Mary Van Kerrebrook** [00:17:49] Yeah, I think it probably was. I mean, I'm the first to say I'm not a biologist, but the trial testimony was more mixed on the question of fire. Many of the biologists felt that fire needed to be used to thin out the forest because it appeared that what red cockaded woodpecker preferred were kind of not super dense stands of very, very old trees. I mean, almost, this is an exaggeration, but almost like what you'd see in the sequoia forest, you know, just massive pines and not not terribly dense.

**Mary Van Kerrebrook** [00:18:49] But subsequently fire, they did start using fire more and. Yeah, I mean, I just don't know. I mean, that's a long way of saying I don't know. I'm sorry. I shouldn't answer that.

**Mary Van Kerrebrook** [00:19:09] I'll pontificate on anything.

**David Todd** [00:19:12] Well that's OK. I think you are being modest. You're way to humble. But thanks for sharing your thoughts there.

**David Todd** [00:19:26] So I think that when we were talking about this earlier in the the way that these forests were being managed, and I think you said that you felt like the timber industry had sort of an outsized role in forest management and I was curious if you could talk a little bit more about, you know, why the forests, which I understood, you know, had a multi-

purpose mandate for, you know, water conservation and recreation and silviculture, all sort of equals, I guess at the trough . What was going on there. Why do you think the timber industry might have had an outsized sway with with the Forest Service?

**Mary Van Kerrebrook** [00:20:16] Well, as in all of these environmental sites, money is is a big piece of the equation. Who has the economic incentive and what did those economic incentives favor? And do the interests that are favored by the economic incentives have outsized power in terms of lobbyists. And do they have sway within, say, the schools where silviculture is being taught at that time? They, they did. All of those things were true. Ned introduced at trial in the red cockaded woodpecker suit, a huge stack of contracts for clearcuts within red cockaded woodpecker habitat. Well for each of those contracts, there was somebody who was going to make a lot of money if those contracts went through.

**Mary Van Kerrebrook** [00:21:31] And also at that time, and perhaps still now, I don't know, the Forest Service itself was perversely incentivized in a way that skewed towards clearcutting. There was a old law called the Knutson Vandenberg Act, which I think dated from the late 19th or maybe early 20th century, which had been passed with the best of intentions to support reforestation of Forest Service land that had been clearcut. And what the law provided, in essence, and may still provide, was that the Forest Service could keep money from harvests and use it to, to plant in areas that were clearcut. So, you know, like any agency or company or individual, the Forest Service had had an incentive to allow clearcuts and then keep the money and use it to plant pine monocultures. So there was a whole, a whole wealth of economic factors pushing in one direction. And then, of course, on the other side again is always a diffuse, often not well-coordinated, terribly, terribly underfunded public interest constituency that was just not being heard at all. And you know, one of Ned's great strength, one of many, was his ability to kind of push through that, and be the voice for this you know, huge, very diffuse group, a lot of whom didn't even really like him because he could be a little bit polarizing. I've wandered off subject.

**David Todd** [00:23:58] No, no, this this is really interesting. It's kind of central to the whole issue. In fact, I was going to ask you, you talked a little about the, you know, the timber industry's role in the Forest Service's management of those public lands. But I'm curious why it would have fallen to our TCONR, Texas Committee on Natural Resources, to be the sort of counterweight when, you know, there were, I imagine, municipal, state, county, federal agencies and academics who you might have been, you know, better funded and more politically powerful, who might have also been able to intervene.

**Mary Van Kerrebrook** [00:24:45] Well, theoretically, they were able to intervene, and many of them obviously knew that there were big problems with the way that the forests were being managed. But then again, this is by no means unique to the timber industry, the, the timber industry was often the single largest taxpayer in these rural counties where the national forests are located. Ned said and believed, and I believed him, and still believe in him, the, the influence that the timber industry had over the forest management school, you know, say at Sam Houston, which college, college is the big, you know, incubator for people who were going to work for the Forest Service or, you know, privately in the timber industry.

**Mary Van Kerrebrook** [00:25:58] I should add, it's my understanding that things have changed a great deal since then. But circling back to your original question, it is so hard to overcome the power of these big, well-funded companies and institutions. And, really going off script, I mean, when I formed the Katy Prairie Conservancy, before we decided to embark on, you know, creating yet another 501(c)(3) land trust, we talked with the federal

government, the state government, the Nature Conservancy. No one wanted to take on the development interests that were then, and largely remain, so powerful in West Houston. It's, it's, it's hard to ask somebody to embark on what appears to be a losing flight. That's not something that most people want to do, and understandably so. Right? And that Ned, that he had no problems with that at all. And in some ways, I think he, he, he loved it.

**Mary Van Kerrebrook** [00:27:43] One of the things that happened after the red cockaded woodpecker injunction was entered, and that, to me is always sort of the story of Edward C. Fritz, is that, of course, there was enormous pushback and public outcry throughout East Texas and outrage with the judge and especially with Ned and TCONR about having gotten this injunction. You know, the timber industry and the Forest Service were saying, no, this means all these jobs are going to be lost and taxes are going to plummet. And, you know, this environmentalist is waging war on East Texas.

**Mary Van Kerrebrook** [00:28:42] So what Ned did in response to that is he embarked on a speaking tour of east Texas pretty much by himself, going around talking to whatever groups would listen to him about the injunction, about selection management, and about what the real economics were. And, you know, fortunately, he wasn't shot to death during that speaking tour, but there was one town that, where there was a huge demonstration and there were always lots of angry people who came to hear him speak. But in this one town there was a guy who had a giant plastic cow, which he paraded through the streets with a big banner that read send woodpecker pies to Fritz, the judge, and Good Time Charlie, who was Charlie Wilson, who was then the Congressman from the area, and a very colorful figure on his own. And of course, Congressman Wilson had nothing to do with the endangered species that time, that he had been essential in creating some wilderness areas in the forest. And of course, the timber industry did not like that either.

**David Todd** [00:30:26] Oh boy, contentious times!

**Mary Van Kerrebrook** [00:30:27] Yes!

**David Todd** [00:30:29] So here's kind of a related question, probably naive again, but my understanding is that the national forests, although they're large, are a small part of the merchantable forest land in East Texas. Why do you think there was such interest in logging them?

**Mary Van Kerrebrook** [00:30:57] Well, it was it was cheap. You know, Ned said, and I believe, that a lot of the timber sales were just, prices were very low, lower than that the timber industry would have had to pay for, you know, logging privately-owned land. And also, of course, from TCONR's vantage point, and Ned's vantage point, the federal laws are the only thing you can really hang your hat on in the legal system. There really are no laws. And at that time, there was no prospect that there would ever be any laws, that would regulate the way that you manage the land privately. I mean, I guess having said that, of course, I guess the Endangered Species Act is an exception, but certainly even Ned recognized that suing the federal government was going to be more palatable than suing private landowners. And he really didn't want to hurt anybody's economic interests, particularly, you know, he very much identified with, you know, the little person, if you will. His whole background was in advocating for people who had no, no recognizable rights and, but it would have been also, as a practical matter, very, very difficult to obtain discovery to find out what was going on on private landowners land. With the Forest Service, there was at least this veneer of process that had to be followed, including, you know, these recovery plans. And there were biologists

who have to write reports. And, you know, again, Richard Conner's draft report was really the central piece of evidence in our RCW injunction case.

**Mary Van Kerrebrook** [00:33:32] But, you know, now. I'm sorry.

**David Todd** [00:33:34] No, go ahead.

**Mary Van Kerrebrook** [00:33:37] Well now there are all these great groups who are doing wonderful things with outreach to to not just private landowners of forest land that but other types of ecosystems as well. And I think that's wonderful and Ned would certainly have supported it. But in terms of a lawsuit, I mean, suing, suing over the Forest Service management was much, much the most manageable way to go.

**David Todd** [00:34:14] So this helps me understand why the litigation would have been focused on the Forest Service and those public lands. Maybe you can talk a little bit about the litigation itself and some of the laws that were, I guess, evaluating as tools here. I mean, it seems like there were a number of options, as you know, Wilderness Act and there was the National Forest Management Act. But then there was also the Endangered Species Act. It seems like the latter was really one of the big guns that used here. And I'm curious if you can recall, you know, some of those choices that were made.

**Mary Van Kerrebrook** [00:35:03] Well, Ned's choices were always to try everything. And before I got involved, I mean, this lawsuit was filed, in I want to say 1985. And he had advanced claims, as you say, under the Wilderness Act, under the National Environmental Policy Act and the National Forest Management Act and the Endangered Species Act. But as you know, so often with environmental laws, the, the tendency and the language of the statute often say that the laws are procedural only, not substantive. They require processes, not necessarily outcomes. And indeed, we saw, you know, with the subsequent appeal under the National Forest Management Act, you know, one of the central questions in that suit, is, does this law require outcomes, is it substantive, or is it purely procedural? And of course, that holding was it's purely procedural. And what that means is that the import of the lawsuit. It might still achieve important objectives, it might buy time for public opinion to change or for the weakness of an economic argument to be exposed, but it cannot, it cannot require a certain outcome. And so that was, that was the thing that the environmental, I'm sorry, that the Endangered Species Act brought was, that some requirement that an outcome, a particular outcome, be achieved, which was, as you know, stop the woodpeckers' looming extirpation in the state.

**David Todd** [00:37:23] So it sounds like the Endangered Species Act, if I can just sum up what you're saying is, had more of a sort of content-driven ability and unlike NEPA or NFMA, which were more procedural, that so long as the government agencies went through the required studies, records and procedures, then they were OK, but the content outcome may not have mattered as much.

**Mary Van Kerrebrook** [00:37:59] Yes.

**Google Voice** [00:38:00] OK. All right. One other thing I think could potentially about some of these these laws is that there was a citizen suit provision in there, that you didn't have to be with the attorney general to have standing to say something. And can you talk a little bit about that role in these laws?

**Mary Van Kerrebrook** [00:38:22] Yes. That was always an issue in the appeals - standing, and subsequent to that, and I am not an environmental lawyer, but subsequent to that, you know, the standing requirements have gotten even tighter. But yeah, you did have to show by affidavit, testimony that your members didn't just have some abstract interest in, you know, good forest management, but that they actually regularly visited the particular forests, and sometimes even the particular stands where clear cuts were proposed or they'd happened. And Ned was always really good about demonstrating that: he would have people come in and talk about, you know. He had folks like Brandt Mannchen, who, you know, who is always so meticulous in his record keeping and and who could say, well, I was at the Sam Houston National Forest, at this stand, on this date, and this is what I saw. And the Sierra Club also had, and may still have, some trails they maintain through through some of these forests. So they would go out there regularly to maintain those trails and of course, to see the wildlife. But that that standing requirement, the, the Forest Service will always or rather, I mean, there isn't really litigation with the Forest Service now, but the defendants will always pick away at standing, because if they can, if they can prevail on that then the suit goes away. You don't even reach the merits. So, of course, that's an argument that they like making.

**David Todd** [00:40:39] Interesting. Yes. So I think Ned and you, and I guess other folks who were involved on the plaintiff side were, of course, focused on what was going on in the national forests in Texas, but I gather were also thinking about the precedent that would be useful outside of the state, and in the years to come. Was there much discussion about that?

**Mary Van Kerrebrook** [00:41:10] Yes. I, that was that was something that Ned and I talked about more in the context of the National Forest Management Act appeal, because after we lost in the Fifth Circuit, it was, it was pretty clear that we were done. You know, the Supreme Court accepts only a tiny handful of cases and the composition of the court was not such that we could be terribly optimistic about the reversal of the the Fifth Circuit's decision that the National Forest Management Act was purely procedural. But Ned asked me to file a request for review with the U.S. Supreme Court. And I did. And and that was pretty contentious. The Sierra Club chose not to participate. And I totally understood that decision because they were afraid. Well, first of all, they understood that the chances of success were vanishingly small, but they were also concerned about the possibility that the Supreme Court would would accept the case, and then affirm the First Circuit's decision . And that was a concern that I took to heart and I discussed it many, many times with Ned. And he just felt very, very strongly that if the Supreme Court were to, were to affirm the Fifth Circuit's decision that that would give rise to a push back. And, you know, public concern about the way that that law would, would be, you know, kind of eviscerated. And that was not a belief that I shared. I did that piece of it really just because I loved Ned so much, and he was so frail at the time and I just didn't have the heart to tell him, "no, I won't do this". But yeah, it is the question of precedent was was significant.

**Mary Van Kerrebrook** [00:43:41] Obviously, the corollary to that was that the Forest Service decided after the red cockaded woodpecker injunction was entered that they were going to honor that decision, not just in Texas, but throughout the southeastern United States in the red, red cockaded woodpecker's habitat. And so precedent, concerns about precedent were good and bad, depending on whether you are on the winning or losing side of the appeal.

**David Todd** [00:44:20] And well, speaking of precedent and I guess things that might have been collateral damage or repercussions in some way: were you sort of looking over your shoulder at the growing problems with the spotted owl in the Northwest?



**Mary Van Kerrebrook** [00:44:39] Well, I was. It didn't play any role, any formal role in the suit, but it was definitely, it was the same situation, right, with a different, a different species. And the same tactics, not just legally, but also in terms of the stirring of the of the public perception pot. I I remember reading about a spotted owl that had been killed by people in the Pacific Northwest who believed that if they killed off the owl, that that would stop Endangered Species Act lawsuits. And nothing like that ever happened in Texas, but that I know of. But, yeah, it's it's it's always the same playbook, right, by the folks who have the money and the interest. So, yes, I was acutely aware of that.

**David Todd** [00:46:07] Well, and I guess the playbook that you're talking about is sort of the the non-judicial, non-litigation, playing it out in the press and general politics said. Is that what you are talking about?

**Mary Van Kerrebrook** [00:46:22] Yes. At that time, there was a lot of media coverage around environmental was absolutely no longer true. But at that time, there was a lot of what I guess they call unearned media coverage, or orange media coverage, of topical stories of which endangered species claims were one. And Ned, was, as evidenced by his speaking tour of East Texas, you know, he would, he would play that game, too. And he you really believed that, ultimately the truth would prevail. And that.

**David Todd** [00:47:16] And what...

**Mary Van Kerrebrook** [00:47:16] I'm sorry.

**David Todd** [00:47:20] Well, I was going to go with that thread, if you don't mind, what was the truth that that Ned, for instance, would have hoped to prevail when he was on his speaking tour? How would he persuade people who felt like they had a vested interest in the status quo that they were wrong?

**Mary Van Kerrebrook** [00:47:43] So he was very knowledgeable about the real economics of Forest Service practices and the logging industry. And while those economics were, they don't really play in to the Endangered Species Act equation, but that is the, the thing that the the industry interests are always going to play on, and a lot of time, on examination, you know, it rapidly becomes clear that any economic benefit is, you know, in the first place, extremely short term. And in the second place is flowing to, you know, a very small group of entities or people and is at the expense of the longer-term interests of the community. And of course, you see that in a lot of environmental contexts, in the context of, you know, East Houston, where pollution and accidental releases are so rampant, and in the context of development where floodplains are paved over and the waters is pushed by giant concrete chutes to come to underprivileged communities.

**Mary Van Kerrebrook** [00:49:26] And in the context of the timber industry, all of these clearcuts were were just decimating the, the forests and the the beauty of the communities, which is why a lot of people, you know, move there in the first place. And then you'd be left with these, well, a lot of times, just just barren savannahs to use Robert McFarlane's word, but in the best-case scenario, replanted pine plantations in little rows like, like corn fields, you know, which is is not a forest and doesn't support forest species of any kind, you know, or very, very many kids, let alone, red cockaded woodpeckers.

**Mary Van Kerrebrook** [00:50:27] And, you know, also these weird laws, you know, many of which were passed with the best of intentions, over time of course, there's a self-reinforcing

cycle that becomes embedded and and increasingly heightens where well-intentioned people see, well, there's there's money to be made. in, you know, in clearcutting timber or in growing corn, for ethanol production, or whatever it is. And, you know, behavioral science tells us that if, if we, human beings, individually or collectively have short-term economic interest in something, it's really almost impossible to persuade us that that thing is a bad thing.

**David Todd** [00:51:32] Hmm. So I think just the short-term interest that might have been proposed by the Forest Service and by the to move was this was clearcutting where I guess you get a big dollop of money. But then a very long drought without any income and was that the concern that Ned was trying to persuade communities about, that you know, you'd have this sort of boom and bust cycle with clearcutting?

**Mary Van Kerrebroek** [00:52:05] Yes. And the bust is pretty long. I mean, it takes a long time for those those stands to regenerate, if they ever do.

**David Todd** [00:52:20] You know, something else that I think has been interesting: I've been reading some stuff by Richard Donovan and Thad Sitton about the culture of East Texas, and that there was this I think they call it, and not to denigrate them, but that there was a backwoods world where there were people who had grown up to run dogs and run hogs and, you know, cattle in the bottoms. And that these folks were very invested in the, you know, the life that revolved around an intact, diverse forest. And I was curious, if you know, when you all were basically kind of trying to argue for protecting the woods, whether you found there was much support from those people who had, you know, lived in East Texas for many years and kind of relied on that sort of ecosystem.

**Mary Van Kerrebroek** [00:53:21] I don't know. I did not go on that speaking tour. Yeah. You couldn't have paid me enough to go on that speaking tour. I was terrified at the thought of Ned going. But that said, certainly in the intervening years, you know, and TCONR, sorry, he Texas Conservation Alliance has done a great job of reaching out to East Texans of a variety of interests and backgrounds and you know, made the case for a more, more sustainable, more long-term thinking. So, yeah. Many, many of the people who are, you know, stepping forward around, say, the reservoir question that the Texas Conservation Alliance is so deeply involved with, you know, some of them are actually timber company interests. So, I mean, in the years since these pitched battles, there is some some growing consensus, by no means pervasive, but, but I think increasing in strength and awareness that, you know, these resources, once they're gone, they they don't come back in the same shape or form, and that we just need to be better stewards in the first place.

**David Todd** [00:55:18] And it seems like a lot of this litigation was trying to shape really wholesale management of the forests and to move toward selective management and use of things that were friendly to the red cockaded woodpecker. But I'm, I've been interested to read about the woodpeckers reliance, increasing reliance, on these artificial nest boxes and that some critics say that a lot of the forests are being managed today in pretty industrial, mechanized ways. But there are these interventions that are done for particular colonies that, you know, don't really address the forest as a whole, but they do protect particular nests. Do you see some fairness there or do you think that's not a just critique?

**Mary Van Kerrebroek** [00:56:23] I I really haven't followed the red cockaded woodpecker much since these lawsuits ended. So I'm going to take a pass on that question. But I think it's a well, a valid question.

**David Todd** [00:56:45] Well, well, let's see, in retrospect what were some of the lessons you drew from you go in the litigation over the red cockaded woodpecker.

**Mary Van Kerrebrook** [00:56:58] Well, the main one was that litigation is both a crucial, crucial thing for people who are concerned about conservation, that also it is really a tool of last resort and Ned certainly perceived it that way. It's expensive and arduous and divisive. And even when the law is on your side and the facts are on your side, you may not prevail. But it can have really important outcomes, substantive sometimes, and sometimes just to create a nest away where public awareness can change or the science can be developed a little bit more and that time can be, that additional time can be a really important outcome too. But after the injunction, the red cockaded woodpecker injunction, I kind of shifted the focus of my volunteer work towards forming the Katy Prairie Conservancy and that, and really any land trust, is about creating massive public support and raising significant amounts of money to protect habitat so that hopefully it will, in a way that is very, very long term. And then part of that was an outgrowth of my experiences with the lawsuits, and how how fraught with risk, you know, they were and how, how short term, oftentimes, the, even the wins proved to be.

**David Todd** [00:59:34] Well, I guess that's always the dilemma, is that you and I mean, nonprofit groups in general, have limited resources and time. There's always the question of where, where do you best spend that effort and seems like you've done both and have kind of evolved in where you think it's best to spend your, your efforts on that. Is that the lesson that you may have drawn from the litigation?

**Mary Van Kerrebrook** [01:00:06] Absolutely, and and I also firmly believe that, you know, there are so few really good tools available to conservation-minded folks. I mean, I don't think it's, it's a useful thought exercise to say, "OK, we're not ever going to litigate or we're not ever going to collaborate". You have to have people who are working across the entire spectrum, you know, using all of the resources that are available. And they may not be the same people, you know, you may have one person like Ned Fritz who's willing to go out and be a trailblazer and, you know, say not just out loud in court, but on the speaking tour, the things that people don't really want to think about or hear. And oftentimes those people can, you know, through their efforts, create space for a more collaborative effort to come in and succeed. So I guess that's another outcome of the suit that I would say is positive, but very long term.

**David Todd** [01:01:34] Yeah. Yead. Well, I guess there are lots of metaphors that might work, there's the idea of a tool box and there are many tools, or an ecosystem with many players. But it is fascinating to see how you've, you've been you know, you've used lots of tools, and been in lots of niches here. And I sure appreciate your time to explain, you know, your experience with it. It is really helpful. I guess we should wrap it up. But is there anything you'd want to add?

**Mary Van Kerrebrook** [01:02:11] No. I appreciate the opportunity to stroll down memory lane. So now I'll have to go back in and read about the nesting boxes.

**David Todd** [01:02:25] Well, I hope you do some pleasure reading, too.

**Mary Van Kerrebrook** [01:02:28] I will definitely do that.

**David Todd** [01:02:31] Good. All right. Well, lovely to talk to you. Thank you so much for your time. I really appreciate it.

**Mary Van Kerrebrook** [01:02:37] Likewise. Take care.

**David Todd** [01:02:39] Goodbye.

**Mary Van Kerrebrook** [01:02:41] Goodbye.