

TRANSCRIPT

INTERVIEWEE: Mary Ruth Holder

INTERVIEWER: David Todd

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David Todd [00:00:01] -My name is David Todd and I'm engaged in an oral history interview here with Mary Ruth Holder, and with her permission, the idea is that we would plan on recording this interview for research and educational work on behalf of a nonprofit group called the Conservation History Association of Texas, and also for a book and a website for Texas A&M University Press, and finally, for preservation and permanent access at the archive at the Briscoe Center for American History at the University of Texas at Austin.

David Todd [00:00:47] And you, of course, would have all rights to use the recording as well.

David Todd [00:00:53] And I just want to make sure that's OK with you.

Mary Ruth Holder [00:00:57] Well, thank you for calling, David. And yes, that is fine with me.

David Todd [00:01:02] Good.

Mary Ruth Holder [00:01:02] Thank you for working on this project. It's important.

David Todd [00:01:06] Well, thank you. Thank you. Well, it's important because of contributions from people like you. So thank you.

David Todd [00:01:15] Well, let's get started with a little description of what will be about today and when this is happening. And it is Friday, August 27th, 2021, about 3:30, or 3:40 now, central Time.

David Todd [00:01:33] My name is David Todd and I am representing the Conservation History Association of Texas. I'm in Austin and we are really fortunate to be conducting a remote interview with Mary Ruth Holder, who is based now in the beautiful Skagit Valley of Washington State. She is a graduate of University of Texas Law School and worked for the Texas Attorney General's Office enforcing state environmental laws and also served as the director of the legal division at the Texas Natural Resources Conservation Commission.

David Todd [00:02:14] And while she was at the AG's office, she joined in important litigation to protect the red-cockaded woodpecker. So there's a definite nexus between what we're talking about here in the conservation of the bird and her life and work.

David Todd [00:02:33] So today we'll be talking about her life and career and especially focus on her work protecting the red-cockaded woodpecker, although that's just a very small aspect of many conservation efforts she's been involved with.

David Todd [00:02:48] So with that little introduction, I thought I might ask you a question about your upbringing. And I understood that you grew up in Louisiana. And I was wondering if there are any early events or influences in your childhood that might have introduced you to an interest and concern for nature?

Mary Ruth Holder [00:03:10] Yes. First of all, let me just say, where I live is pronounced "Skadget" County, "Skadget" Valley. Yes. It's kind of funny.

David Todd [00:03:21] My apologies.

Mary Ruth Holder [00:03:25] This, the red-cockaded woodpecker is maybe a small part of what I've done, but I view it as a very large and important piece of my life. And I'm just thrilled to be here today.

Mary Ruth Holder [00:03:40] So I grew up in Louisiana, indeed. And we lived outside of Shreveport, which is an area of woods, pine woods, and cleared farm fields. And I just loved being outside, exploring the woods and the little creek that ran through our property with all of its little crayfish and other aquatic animals. And I also loved being alongside my mother, who was the steward of our small acreage and animals. And she raised dogs.

Mary Ruth Holder [00:04:15] And my father had studied geology and he took my sister and me out west to the Grand Canyon and these other wonderful national parks where he would explain the geology of those places and help us understand, well, why public lands are such special places.

Mary Ruth Holder [00:04:36] And then when I look back, I think that being in the natural world that way, at home and in travel, it both fascinated me, but it also reassured me. It was something that made me feel calm.

Mary Ruth Holder [00:04:52] And so then two things stand out that I think led me to advocate for environmental protection. In the early 1960s, and this would be after 1963 some time, my mother and her good friend Dorothy talked about a book they had read, Rachel Carson's "Silent Spring". And I listened to them worrying that the bluebirds that we used to see seemed to be gone. And that there were just fewer and fewer bobwhite quail that you could hear calling in the evenings around us anymore.

Mary Ruth Holder [00:05:27] There was no development project going on in the area, and they worried that this was from that chemical fog of DDT that the county was spraying for mosquitoes. And that's that sweet smelling fog that kids like us in those days would run along behind and and try to sniff along. It was a sweet smell.

Mary Ruth Holder [00:05:50] Also, then the state dropped fire pesticide called Mirex from small airplanes. And you could just hear it hitting the leaves. It just rained down on us. And our dogs got sick and some of them even died.

Mary Ruth Holder [00:06:07] Now, of course, both pesticides were later banned by EPA because of the harm that they were doing to wildlife and for the fire ant bait to the native ant species.

Mary Ruth Holder [00:06:18] But back then, without any resources or conservation groups on the scene that maybe could help, my mother and her friend were just powerless. They

contacted some public officials who ignored them and ignored their calls and letters. And so looking back, I know that those incidents and our predicament and their predicament, those women, it just stuck with me. And I think it is what it was my compass for what the work I eventually did.

David Todd [00:06:53] It's so frustrating when you see things, you hear things, you experience them, and others don't take them to heart. I can understand that.

David Todd [00:07:07] So tell me more. Do, do you want to talk a little bit about your education?

Mary Ruth Holder [00:07:14] Sure. I have a, I don't have a biology or ornithology background, or any expertise in those areas that I could claim, because in college, and I went to SMU, I majored in psychology and I took a number of courses in religion and religious philosophy taught by the theology school professor there. And then, as you said, I went to U.T. law school.

Mary Ruth Holder [00:07:46] And between college and law school, my husband and I, of course, would travel on vacations to public lands - camping, backpacking, day hiking. And I think it deepened our appreciation for wilderness and animals and plants that live there.

Mary Ruth Holder [00:08:03] I went to law school later in life than many other students. I had begun to read all the articles and books I could find on environmental and worker safety issues. So books like, the toxic waste, about the toxic waste impacts on people in the Love Canal neighborhood in New York, or maybe books on water pollution or just that.

Mary Ruth Holder [00:08:32] And I actually went, applied to and went to law school for the very specific purpose of eventually working to enforce laws on those issues at maybe EPA or OSHA.

David Todd [00:08:45] That's so interesting, so that you really had a very determined focus, a very deliberate kind of expectation of what you wanted to do with this degree.

Mary Ruth Holder [00:08:59] Right.

David Todd [00:09:01] Well, you mentioned that that, of course, you know, you studied at SMU and the University of Texas and of course, had a good formal education there, but did you also read in the field. And I was, I think, curious if there are any particular titles that might have had a big impact on you.

Mary Ruth Holder [00:09:26] Well. I think over time, several books inspire me to do the work I do. So Aldo Leopold's "A Sand County Almanac". Then a little later on, books by Terry Tempest Williams and particularly "An Unspoken Hunger" and "Refuge". And then, of course, lately, Robin Wall Kimmerer' "Braiding Sweetgrass" and Suzanne Simard's book, "Finding the Mother Tree". Those things inspire me.

David Todd [00:10:04] That's interesting. So sometimes books don't just inform you, but they inspire you. They encourage you somehow?

Mary Ruth Holder [00:10:13] Yes.

David Todd [00:10:16] Well, maybe we can go back a little bit and since some of these books are recent. But back in the '80s, you came to work at the Texas Attorney General's Office in its Environmental Protection Division, which is really noted for, you know, its, its really hard-working, diligent efforts to, to bring cases on behalf of the environment. And can you talk about how you ended up there, in that pretty elite squad of legal eagles?

Mary Ruth Holder [00:10:54] I was fortunate to work there. While I was still in law school, I worked as a law clerk part-time in the Environmental Protection Division of the A.G.'s office. And so then after law school and after being a briefing attorney for the Texas Supreme Court (that's a one-year position), I landed a job as an assistant attorney general working on enforcement cases when Jim Maddox was the A.G. And it was fantastic work. Jim Maddox was very supportive of the Environmental Protection Division, and we had a wonderful division chief, Nancy Lynch.

David Todd [00:11:39] Yeah, can you talk a little bit about those, those days, because I think that in retrospect, they seem to be really rare and special times when, you know, there was support and latitude for that kind of prosecution at the state level.

Mary Ruth Holder [00:11:58] Yeah, I, I worked on a really wide variety of cases. So I represented the Texas Water Commission, the Air Control Board, the Health Department in air and water quality enforcement cases, health department (those were cases addressing hazardous water systems in South Texas colonias). I worked on some interstate stream compact matters and of course on the case involving the red-cockaded woodpecker and a couple of other projects involving the Endangered Species Act.

Mary Ruth Holder [00:12:36] And you're right, it was a real, it does seem now like it was a really special time. And as I said, General Maddox was very supportive of that division. And I felt then and I still feel really honored to have worked there and on the case to protect the woodpecker. I think that case is really special for me because it involved the Piney Woods. So site visits to the forest felt like home. And because I been closely following reports by Seattle journalist Timothy Egan about efforts to save the last Northwest old growth forest and the spotted owl from clearcutting.

David Todd [00:13:18] That's really interesting. So you really had a kind of a national perspective or context for what was going on in East Texas from early on.

Mary Ruth Holder [00:13:30] I think so, I think. Yeah, that's right.

David Todd [00:13:33] I see. Well, you mentioned this red-cockaded woodpecker litigation that you got involved in. Can you maybe give us a brief sort of layperson understanding of the life history and habitat of the red-cockaded woodpecker? And I know you gave us caveats about how your, you don't have really that kind of training, but I'm sure you've thought about it a good deal.

Mary Ruth Holder [00:14:04] I thought about it and I learned so much about it.

Mary Ruth Holder [00:14:08] It's really a shy little woodpecker. It's not very big. It's about seven inches long with about a 15-inch wingspan. And what's great and interesting is it's different for most birds and even other woodpeckers in a couple of respects.

Mary Ruth Holder [00:14:26] It's what's called a cooperative breeder, which is unusual in birds. And I'll explain that. And then also, unlike other woodpeckers, it drills out cavities in living pine trees, not dead, dead trees. And of course, they presently live in east Texas, primarily in the national forests, and they also live in several other southern states.

Mary Ruth Holder [00:14:53] The species evolved to live in mature pine forests that had little understory vegetation. And that lack of understory vegetation was a result of frequent fires that were either caused by lightning strikes (and these fires would occur maybe one to every five years), and in some places, controlled burning was done by indigenous peoples. Then those fires allowed seeds from these fire-resistant longleaf pine trees to reach the ground rather than being lost in a tangle of understory plants where they couldn't germinate.

Mary Ruth Holder [00:15:35] So the birds nest in the longleaf pine tree and, in their natural state, the birds create a cavity hole for nesting and roosting in a pine, a mature pine, that is 100 years old or more. And they choose pines that have this thing called red heart fungus. Now that fungus softens the tree's inner wood, so that allows the birds to more easily excavate their cavities. And the cavities run up above and a bit and below the hole, the cavity hole. So they need to pick out quite a bit. And they also would pick out resin wells around the cavity openings so that the tree sap would flow out and create a sticky patch, which would stop rat snakes and maybe other predators from getting in. And those cavities were about 100 feet off the ground or so.

Mary Ruth Holder [00:16:41] These little birds don't migrate, but they stay in their territories and they have this unusually complex and quite amazing social system. They live in family groups in these colonies that might consist of, I don't know, up to 20 or more cavity trees. And those cavity trees might be on anywhere from three to 60 acres, sometimes more. Then the family's home range can be more than 200 acres. Now, this term, they use, "cooperative breeders," that means that one mated pair of birds (and they mate for life) will live in a colony. They occupy, they make a nest and occupy that.

Mary Ruth Holder [00:17:29] And they have these helpers, usually male offspring from previous years. And they can have one to even four helpers that help, that help - they help with all the tasks. They incubate the clutches of four to five eggs. They feed the nestlings, they clean debris from the cavity. They help defend the family's territory. And then these extended family members or these helpers will roost in nearby cavities. The families will use their cavities for decades to house generations of the families. And it would take them, I think the estimate was, one to six years, it could be, to create new cavities.

Mary Ruth Holder [00:18:16] And after that, the babies hatch out and they fledge. They leave the nest. They hatch at about 10 to 11 days after being laid, and then they fledge at about two weeks or, I mean, sorry, 24 days after being hatched out. The adults continue to feed the fledglings for up to six months and then they all disperse. But then some of those males, of course, will remain in the colony area to become helpers.

Mary Ruth Holder [00:18:50] So the food for the birds is interesting because they eat larvae and eggs of beetles and most interestingly, the southern pine beetles. And then they also eat ants, termites, spiders, anything found on the pine trees. And they also will eat fruit and seeds to a lesser extent. And about 90 percent of their foraging for food is on pine trees, which they prefer the larger trees so they can get up under those bits, those larger plates of bark, and probe under there to get the insects. And then they also forage in their family groups.

Mary Ruth Holder [00:19:30] So there are conservation efforts now that are helping the woodpecker. And that includes these artificial cavity boxes and I don't know what you know about those, but they were developed.

David Todd [00:19:47] So Mary Ruth. Well, just thinking I would really like to get into the conservation efforts, but it might be helpful to talk about why those conservation efforts were needed, first. You want to talk a little bit about the decline that that was seen for the red-cockaded woodpecker? Would that work for you?

Mary Ruth Holder [00:20:09] Yeah, well, of course, the long history of their decline began with European colonization of America, and that led to massive cutting and conversion of forests to towns and farms because there was, of course, the march of settlement across the continent.

Mary Ruth Holder [00:20:34] The, originally the woodpeckers were in longleaf pine forests throughout the southern states. And I've seen a couple of estimates that there may have been as many as over a million, to a million and a half, family groups in that ecosystem.

Mary Ruth Holder [00:20:57] But then the predominant culture and of the Europeans, colonizers, I guess you could say that they looked at nature and natural systems, like forests, that kind of thing, as just, as a resource for commercial gain. And so species like the woodpeckers became collateral damage. And then in the 1930s, the southern forests and the Texas National Forests were cut over for the sale of timber and the colonies were destroyed.

Mary Ruth Holder [00:21:38] Because the birds, of course, depend on old-growth pine forests for their habitat and food, they then fell victim to the practice of mechanized clearcutting, which began in the early 1960s. That sort of took over the forest areas fast because that's - you cut a whole stand at one time, and so that caused the forest to be - the fragmentation of forests.

Mary Ruth Holder [00:22:11] It resulted also in the, because forests were being grown as a crop, so it resulted in converting longleaf pine forests to other types of pine and, and there were also short cutting rotations so that trees were not allowed to be as old as they had been in the forest, naturally. So the other thing that was, that would happen would be fire suppression, and that would create these really dense pine / hardwood forests that had understory growth and all of that. There was also, all through that period, there was also continued conversion to farmlands and urban areas that contributed to the decline.

Mary Ruth Holder [00:23:02] And sort of adding to all of that, were the actions undertaken by the Forest Service to control the southern pine bark beetles, even in areas of national forests that were established under the Wilderness Act and should have been left, to be left as wilderness. So that led to further decline. And eventually the woodpecker sort of, throughout this period, it disappeared from several states, struggled mightily in Texas, and then most of the remaining large populations were and still are on federal lands of various kinds throughout the South where they occur.

Mary Ruth Holder [00:23:48] This species was, had declined so much, that by the time a report was conducted in 1987 on the Texas National Forests by, coauthored by, two Forest Service research scientists, there were just huge declines. And that is even after the species was listed, it continued to decline. It was listed, it's interesting because it was listed as

endangered in 19, way back in 1970 under a law that preceded the Endangered Species Act of 1973.

David Todd [00:24:40] This is so interesting and you're such a clear explainer of a long, complicated story. One thing that you mentioned, that I was wondering if you could give us a little bit more detail about, is the Forest Service efforts to control the pine bark beetle. And I imagine some people may not be familiar with the southern pine bark beetle and what the problem is and then how it was controlled and maybe what the effect was on the red-cockaded woodpecker. Could you maybe fill us in?

Mary Ruth Holder [00:25:15] Well, the southern pine bark beetle is a critter that, as I said, was a prey insect for the red-cockaded woodpeckers. The southern pine bark beetle, though, can just go in and just destroy a whole stand of pine trees. And what was happening was that the Forest Service, was, and this came up in one of the cases that I hope we'll talk about, the Forest Service was clearcutting areas that they had this whole management program to control the pine bark beetle. On the ground, they were clearcutting areas to control it and they were clearcutting those in a way, which we can talk about because it was the topic of a case, talk about in greater detail, but they were cutting them in a way that was, I would call it "sloppy."

Mary Ruth Holder [00:26:22] It didn't comply with their own, their own plan to control the beetles. And it actually promoted the spread of the beetle. And they would go in and cut the trees. They'd fell a tree and angle it so that it didn't fall into where the southern pine beetles were. Right? It would fall out, to the other direction. And it was just ... and then they'd leave the tree on the ground and it would just, the southern pine beetles would just spread from that tree, you know, into areas that were not infested. So it'll infest an area. And it is very damaging.

Mary Ruth Holder [00:27:02] And, and there are those who observe, and I think even in one of the judges in one of the cases, I think it was Judge Parker, observed that the, that the bark beetle infestations were made worse by establishing stands of all the same type of pine trees. So you just sort of invited them in there and, you know, it, the problem just grew worse and worse, and then the efforts to contain it were, as I said, sloppy and not even in line with the Forest Service's own direct directives.

David Todd [00:27:59] I see. OK, thank you. That's great. That explains a lot.

David Todd [00:28:05] Well, not to get ahead of ourselves, but I think you mentioned while we were going over some of that history, that, you know, there was this listing of the red-cockaded woodpecker back in 1970.

Mary Ruth Holder [00:28:19] Yes.

David Todd [00:28:20] And then the ensuing decline. And again, I guess this led to some litigation in the '80s and perhaps you could talk a little bit about those lawsuits.

Mary Ruth Holder [00:28:35] Sure. OK. Well, we were talking about some of the problems of beetle control that, that played in, or came into play in, some of the lawsuits, and, and the, the management of beetles in the wilderness areas. So and I know I've talked about even-aged. I want to first talk a little bit about the different types of harvesting timber, because that's part of the lawsuits, too, and the...

David Todd [00:29:11] Please.

Mary Ruth Holder [00:29:13] So, clearcutting, seed-tree cutting and shelterwood cutting are all forms of what are called "even aged management." And in the Texas forests, the result is a stand of, like I said, same species of pine trees, the result of clearcutting, all the same age, that will be harvested in the future on a relatively short rotation schedule.

Mary Ruth Holder [00:29:42] Seed-tree cutting and shelter wood are really a form of even man management because seed-tree cutting leaves a very small number of trees to drop their seeds, to seed an area naturally. But after just a few years, those salvaged trees are cut.

Mary Ruth Holder [00:30:04] Shelterwood leaves roughly double the amount of seed trees. But again, after a few years, those trees get cut down. So, as I said earlier, the even-age management cutting methods, the clearcutting methods are highly mechanized, but they're considered by the timber industry to be more economically profitable and perhaps because they are more mechanized.

Mary Ruth Holder [00:30:36] There's a, there's a different kind of cutting called selection cutting or selection management. So in that method, you leave a stand, you leave uneven-aged trees in the stand. The trees are of different class, age classes and they're of different height. And it's a more intensive management approach. And people have said it requires more people to manage that. So it may be more expensive to the timber industry, but guess what? It means more jobs.

Mary Ruth Holder [00:31:19] So let's turn to the cases then. The first one that involves the woodpecker, although he's sort of a background figure, is the 1985 case called Sierra Club vs. Block and it was heard in Lufkin, Texas, in federal court. It was brought by the Sierra Club and the Wilderness Society. In that case, those groups challenged the southern pine bark beetle control practices in light of the impacts on the wilderness areas. And, and the the impacts of that, by the way, involved, you know, large machinery, roads, and as I said, cutting down all the trees, both hardwoods and pine trees. And, and those are things that in wilderness areas are not supposed to happen. There are some exceptions, but they're not typically supposed to happen. So they sued over five wilderness areas and they also talked about the woodpeckers in there. And those five wilderness areas were in three of the national forests.

Mary Ruth Holder [00:32:49] The case itself was not brought under the Endangered Species Act or E.S.A, but it was under the National Environmental Policy Act or NEPA, that says that federal agencies, when they take an action that might significantly affect the environment, they have to assess the environmental impacts of the action and prepare statements about those impacts and about alternatives. And so those groups argued that the type of environmental assessments that they, that were conducted were inadequate.

Mary Ruth Holder [00:33:27] The judge, Judge Staker in Lufkin, didn't issue a temporary injunction that was sought by the plaintiffs. And they were trying to halt all timber cutting in the wilderness areas. But they found that, he was the first to found, find, he found that the Forest Service was not even following that Southern Beetle Pine Control Program guidelines - those guidelines, like I talked about before - including the special guidelines for woodpecker habitat.

Mary Ruth Holder [00:34:01] If you read the judge's order in that case, you can see that the Forest Service measures being taken were shockingly bad: as I said, cutting out hardwood trees, for example, when those don't have anything to do with pine beetles, cutting out unnecessary buffers and allowing sloppy practices that actually promoted the spread of the beetles to new areas, even into adjoining private lands. So that judge imposed six restrictions on the Forest Service, even though it wasn't an injunction. It wasn't a temporary restraining order or a temporary injunction. It was restrictions. He told the Forest Service to stop cutting hardwood trees, and to only cut where necessary to protect woodpecker colonies or to stop the beetle spread to private lands, to start felling those pine trees towards the infested areas rather than away from them, and just only take minimally sufficient beetle control steps in the wilderness areas. And for Pete's sakes, start supervising the people actually doing the cutting so they can ensure their own guidelines were followed.

Mary Ruth Holder [00:35:24] There was a subsequent, in 1987, case called Sierra Club vs. Block, which was brought, and for the first time, under the Endangered Species Act, but because that case was getting ready to go to trial before, this was before federal Judge Robert Parker in Tyler, in that federal court, the judge did not enter a TRO but he did say he was going to leave the restrictions that Judge Steger had imposed in place. And he enjoined the Forest Service from cutting within 100 yards of the boundary of any red-cockaded woodpecker colony site until full trial.

Mary Ruth Holder [00:36:09] And then that brings us to the case, the first case that I had any involvement with, and that's Sierra Club vs. Lang. And that case was tried before Judge Robert Parker in Tyler, like I said, over four days in February and March of 1988, and the judge came out with his order in June of 1988. This time, Wilderness Society, Sierra Club and TCONR, were trying to (Texas Committee on Natural Resources, TCONR) were trying to enjoin the management action of the Forest Service. And they made four claims, but the primary one was. because the judge really didn't hear the other, really didn't rule in favor on the other claims, but the primary ones, that the actions that the Forest Service was taking were constituting illegal taking of red-cockaded woodpeckers in violation of Section nine of the Endangered Species Act, and that their actions were jeopardizing the continued existence in the wild in the Texas national forests of the bird, and that that violated ESA Section seven.

Mary Ruth Holder [00:37:41] So this trial ensued and the judge's order ruled in favor of the plaintiffs. And he found both the "taking" in violation of Section nine and "jeopardy" under Section seven. And he also found that Section seven of the Endangered Species Act was violated because the Forest Service had failed to reinitiate consultation with US Fish, or consultation had not been reinitiated with US Fish and Wildlife. He described the situation as one where the agency's practices themselves had caused and accelerated the decline of the species in the national forests. And based on this 1987 report that I referenced earlier by two Forest Service researchers, Conner and Rudolph, who gave witness testimony based on that, he made those findings. And he also found that the agency had never implemented a 1970s red-cockaded woodpecker handbook. And that the declines of the species had been caused by habitat fragmentation, clearcutting in foraging areas within two hundred feet of colonies and sometimes even right up to the cavity trees, from the failure to control hardwood story growth near the cavities, failure to conduct prescribed burning in those colony sites and or foraging areas. And he also found that there was a lack of mature cavity trees at that point due to both the silviculture practices and putting roads and off-road tracks in colony sites and then damaging the colony in the foraging sites from logging trucks and equipment. And then finally that they had failed to preserve trees with red heart fungus in the habitat areas.

Mary Ruth Holder [00:40:08] So given the dire predicament that he felt the woodpecker was in, and he felt that they might even be extinct in Texas by 1995, so he permanently enjoined further even-aged cutting in the Texas national forests within 1200 meters of active colonies. And it gave the Forest Service 60 days to create a comprehensive plan for future management techniques in line with his findings of fact. And he said the plan had to maximize the probability of the species' survival.

Mary Ruth Holder [00:40:51] He went further than that, though. He didn't just say, "you have to come back with me to me with a plan." But he also laid out some restrictions or requirements for the plan. He said it wasn't to be restricted to the old woodpecker handbook, and he said he required that timber harvesting within 1200 meters of the colonies had to utilize a selection cutting method or tree management system. He required that they thin vegetation within 1200 meters of the colony to an optimum density of 60 square feet per acre. He'd leave the old pine trees intact, require them to remove hardwoods in and adjacent to the colony site, and eliminate or restrict the use of roads near colony sites and provide an overall mechanism for monitoring the plan and its enforcement and so on.

Mary Ruth Holder [00:42:03] So the Forest Service did submit a plan, I guess, within that 60 days I know that they submitted a plan. But, and then in that plan, though, they tried to sneak in or not sneak in, but they tried unsuccessfully to allow longer rotation, but shelter, even-aged management practices of shelter woodcutting, instead of selective management cutting and the trial, the Judge Parker ruled against them.

Mary Ruth Holder [00:42:41] Then they submitted a second plan. But, but they didn't do that before they appealed the case to the 5th Circuit Court of Appeals. And in that case, on appeal is called Sierra Club vs. Yoetter. It's a 1991 case. So the Court of Appeals, Fifth Circuit, after hearing oral arguments and reading the briefs and so on, they found they supported the trial court in its finding that there had been a violation of Section nine of the Act prohibiting, that prohibits taking the species.

Mary Ruth Holder [00:43:30] And they said that was based particularly on the admissions that were made at trial by the Forest Service supervisor that the agency hadn't fully implemented the Woodpecker Handbook prior to, prior to the, even prior to the release of the 1987 report that they allowed clearcutting with 200, within 200 feet of cavity trees. They hadn't removed midstory hardwoods. So they basically, based on the Judge Parker's findings, they also upheld Judge Parker's determination that the actions of the Forest Service were likely to jeopardize the continued existence of the species, violating Section seven of the Act.

Mary Ruth Holder [00:44:16] But, and then they reviewed the consultations with, that had occurred between the Forest Service and Fish and Wildlife and amazingly (I didn't mention this before) Fish and Wildlife Service, after the Conner and Rudolph report came out in 1987 about drastic declines of the woodpeckers, Fish and Wildlife Service amazingly determined that no further consultation was necessary. But they recommended that the Forest Service leave shelterwood, and seed-trees at least in place at least 100 years. So that was kind of bad.

Mary Ruth Holder [00:45:03] So the appeals court said it was OK for the trial court to require plan for consultation with Fish and Wildlife to be submitted to the trial court in 60 days. That was OK. But the appeals court said it was not OK for Judge Parker to spell out particular provisions that had to be in that plan. And then they, so they affirmed in part. And then they made this finding and then they remanded the case to the district court to review the second plan for compliance that the Forest Service was had for compliance with the ESA. But they

said the review must be of the plan, its effects on the CRW and its habitat as a whole, and not whether it complied with the trial court specific requirements for the plan.

Mary Ruth Holder [00:46:00] After that, there was another case much later, in 1995. There's a court of appeals case, 5th Circuit Court of Appeals case called Sierra Club vs. Glickman. I did not participate in that, as I said. And the Forest Service had submitted a management plan called "Interim Standards and Guidelines for the Protection and Management of the Red-Cockaded Woodpecker within Three-Quarter Miles of Colony Sites. And they had asked Judge Parker to lift his injunction against them.

Mary Ruth Holder [00:46:35] So, but he found that those interim guidelines violated the ESA's taking prohibition. Well, the Fifth Circuit Court of Appeals, unfortunately, found that the district court, or believed the district court had applied the wrong legal standard of review in making that decision. So they, what's call "vacated" the district court's order. And the case was once again remanded to the district court to review the interim guidelines, again, applying the legal standard for review they said was correct.

Mary Ruth Holder [00:47:11] And then I sort of get lost in what happened next. I believe what happened next was there was a sort of overall plan of some sort, the Forest Service Southern Region plan. And I don't know if that sort of knocked out this sort of plan for the Texas National Forest because it covered a bunch of Southern states and Texas. So this apparently was going on just as the Fifth Circuit Court case was still pending. And I don't know even what they're implementing now, but that's what I know about the cases.

David Todd [00:47:54] Well, that's impressive. I mean, it's, gosh, over a decade of of litigation trying to, I guess, wrest the sort of management that the U.S. Forest Service was, was wielding in the National Forests in East Texas.

David Todd [00:48:16] You know, it's, it's interesting to talk to you because you actually had a personal role in some of this litigation, involved in appellate arguments and preparing witnesses. And can you talk about what that experience was like?

Mary Ruth Holder [00:48:35] Yeah. So I attended the four day trial in Sierra Club vs. Lyng to help prepare two witnesses from Texas Parks and Wildlife who were to give testimony about the bird and its habitat, that would support the plaintiffs' case against the Forest Service. Texas Parks and Wildlife Department has its own list of endangered species and they compile information about their status. So that's why their employees might be involved. And I think, as I recall now, I think only one of those two witnesses was ultimately called to testify. So I was not a participant in the trial, but I attended all four days and also provided assistance as I could to the plaintiffs.

Mary Ruth Holder [00:49:33] Then on appeal, the, the appeal was to the Fifth Circuit District Court that was Sierra Club vs. Yoetter. And the state of Texas, or we, were an "amicus curiae," it's called. These are, there are different pronunciations, amicus curiae, or amicus curiae, I think they say amicus in Texas, but it's really more commonly amicus. It's Latin for "friend of the court." So that is a person or entity who's not a party to a case. But if it has a strong interest in it, that it can show the court, then the court can allow the party to submit if the, not the party, but the entity or person, to submit written briefs and, in some cases, make oral arguments supporting one side or the other. So our office supported the plaintiffs here, Sierra Club and TCONR. The Texas Forestry Association, appeared as an amicus for the Forest Service and a Fifth Circuit panel of judges heard the case a first time and then, as I recall, in

New Orleans. And then, as I recall, one, this is what I recall about this, one of the three judges had to recuse himself, and that's why, and so we ended up doing oral argument or I ended up doing oral argument a second time over in Houston.

Mary Ruth Holder [00:51:14] And it was, it just, it's, it's hard to describe the experience in the trial that you ask about. It was, it was extraordinary. It was just extraordinary to watch and fascinating. It was you know, the witnesses were fascinating - the Forest Service researchers I talked about, the, the testimony. It was, it was really quite an experience. It's hard to describe.

David Todd [00:51:52] Well, maybe we can talk a little bit about some of the sort of aspects of, of, of these lawsuits, if you'd like to go there. I think it's, it's intriguing that, given all the, the many forest managers and biologists and ecologists who work within the US Forest Service, who understand those forests pretty intimately, why do you think it took pressure from outside of the agency to more properly manage the national forests?

Mary Ruth Holder [00:52:36] Well, I think that there was, you have to kind of look at the history of the laws. I think this is part of it, part of it, that, that the Forest Service operates under. So for a long time, they were directed to maintain a timber reserve for the production of timber. There was something called the Multiple Use Sustained Yield Act of 1960. And notice, notice that date clearcutting came into use in the '60s. So we got this Act of 1960. It came along and it required the agency to also manage for outdoor recreation and protect wildlife while producing timber. Now, the sustained yield piece of that law, however, I think led to timber production to take, and others think, to take precedence over those other uses.

Mary Ruth Holder [00:53:32] Then there was a 1976 National Forest Management Act, which didn't really help things at all. It directed the Forest Service to produce timber at a, quote, "non-declining rate." And then this sort of created a rotation system of trees, resulted in a rotation system of trees that were allowed to grow only 60 to 80 years before harvest.

Mary Ruth Holder [00:54:00] So another factor is that the laws provide that the timber sale proceeds go into the Forest Service's discretionary funds and they also go to local rural governments where the forests are located. So the short rotations resulted in growing species of trees as a crop, in what some people call a pine plantation, and there you have the timber sale proceeds going to the Forest Service and to the local governments there. So those are pressures.

Mary Ruth Holder [00:54:48] Growing those species as a crop like that is, as Judge Parker found, this is all incompatible with the red-cockaded woodpecker's needs, although it's important, as I said earlier, that Judge Parker and others have observed that these dense even-aged stands of young, same species, species of pine, are quite compatible with the southern pine beetle spread. You know, that that insect that the million and a half red woodpeckers used to control, probably.

Mary Ruth Holder [00:55:29] So this is an approach of maximizing the profitability of logging on these public lands that ends up elevating, growing and harvesting timber over other values and uses. At the time of these lawsuits, it certainly felt like there was a kind of "this is the way we've always done it" atmosphere around the work of the Forest Service. And there's resistance to change even to the agency's own biologists and resistance certainly to the conservation groups calling for change.

Mary Ruth Holder [00:56:07] Now, Judge Parker's order recognized that even-aged management versus selection management that would be more beneficial to the woodpecker was preferred by the timber companies. And he noted that the Forest Service is an agency which has experienced a high degree of, quote, "the revolving-door phenomenon" between governmental and private interests and provided an incentive for agency personnel to accommodate what the industry wanted. So that helped explain the high level of influence the timber companies have had over policies, practices and the laws of the Forest Service.

David Todd [00:56:57] You know, it's interesting what you say about the, I guess, Judge Parker's observation about this revolving door relationship between the U.S. Forest Service and the forest industry. I guess another aspect of the whole industry is, is where the foresters were being trained. And did you find that that, you know, the forestry schools were supportive of, of one approach or another of, of silviculture?

Mary Ruth Holder [00:57:32] I'm not prepared to answer that from personal experience, but that is certainly what I would hear people say. Yeah, that's what I heard people say, and it depended they weren't all that way. There were some folks, I think it was Duke. Was it Duke Forestry School that, that people that came out of there weren't that way, particularly, but I think that's, I think that's right. But I don't have personal, you know, I've not gone to any of those schools.

David Todd [00:58:12] OK, well, here's another question, which I think might be worth talking about is that, you know, again, it seems like a lot of these decisions might have been traditionally made within the agency, about how to manage the forest. But, you know, in the '80s, it was necessary to get judges involved. And, you know, it's, it seems odd in a respect because it is a pretty technical field of, you know, basal area and board feet and, you know, the peculiarities of the red-cockaded woodpecker. I was curious if, if you could sort of give your perspective on this sort of judicial role in managing wildlife, especially those that come under the Endangered Species Act.

Mary Ruth Holder [00:59:15] Well, I think you're asking about is that the best place or, is a courtroom the best place?

David Todd [00:59:31] Right.

Mary Ruth Holder [00:59:31] You're saying? I think, in this case, in this situation, for one, I think that the red-cockaded woodpecker and the plaintiffs were really lucky to have a judge who was familiar with the forests. He talked about during the trial, he talked about hunting for, I think it was woodcock in the forests, and that he couldn't find any woodcock in the clearcut areas anymore. You know, he was familiar with the forest. He was familiar with the ... he was bright. He, he understood. You know, all these laws we're talking about are complex and the facts were complex, as you were talking about the basal area and all that. But he was really up to the job, shall we say. And he really, I watched him really very carefully. And, and, you know, federal judges are allowed to ask questions during trial, unlike state court judges and stuff. And so his questions to the witnesses were very insightful, very good.

Mary Ruth Holder [01:01:03] But it yes, it did, as I said it, it felt, it felt unusual and, and kind of scary to be in a courtroom watching an evidentiary hearing over the fate of a species. So, and I think over time, and after a lot of, you know, bruising litigation around that time period involving this species, the northern spotted owl, people started looking for alternatives to going to court where that was possible.

David Todd [01:01:52] I see, OK, see something where there maybe was a little bit more control and engagement with the decision-making process. You were sort of farming it out to a judge that maybe wasn't trained or experienced.

David Todd [01:02:14] So how I think it'd be interesting to talk about the role of the Endangered Species Act in the restoration of the red-cockaded woodpecker. I mean, there were lots of laws that Judge Parker and the appeals court were involved with, whether it's the National Forest Management Act or I think you mentioned some of these earlier laws that have been in play, the Multiple Use Sustained Yield Act. And, you know, they're about the forest, but it seems like this Endangered Species Act was really singularly effective in the restoration of the bird. Is that fair to say?

Mary Ruth Holder [01:03:00] I think that's fair to say, and we can talk more about this, you know, but right now it's, it's, as you say, it's, it's looking like restoration of the bird. And however, that is really dependent on some very high, highly maintained, highly intensive, highly intensive management of the actions taken by human beings, you know. But we can talk about that. But I, I, of course, it seems obvious that this bird would no longer be, at least in Texas, for sure, it would no longer be in existence without the Endangered Species Act and without the litigation. And I guess the Act itself, the way I look at it, when Congress enacted that ESA of 1973, it was stronger than its predecessors, predecessor laws. And, to me, that is an example of humans at their best. It's a strong, altruistic law, altruistic toward other creatures that we share this planet with. And Congress understood at that time the compelling need to conserve declining populations of species for the benefit of future generations of Americans. As I said, I don't see any way that woodpecker would be with us, if not for that law.

Mary Ruth Holder [01:04:46] The case, the law, the case, it halted that steady decline toward extinction and, you know, has really led to important changes in the management of that species on federal lands. And I think the attitude of federal land management's managers, because lawsuits like this for the woodpecker and in the Northwest on the Northern spotted owl, make them take obligations under that Act perhaps more seriously, if you will, and to start paying attention to what their biologists were telling them.

David Todd [01:05:25] So it sounds like part of the ESA's leverage is that it's, it's maybe more black and white, there are these ideas of, of, of jeopardy are more clear cut perhaps than, than the National Forest Management Act, where there just seems to be a lot of discretion, and balancing, weighing of different objectives for the forest. Is that so?

Mary Ruth Holder [01:05:54] I think that is, I think that's true. And even the Wilderness Act has exceptions to it. There was a case in, in the District of Columbia that the Wilderness Society brought proceedings, some of these cases in Texas. And they, it was a case, it was involved other southern forest. I know Louisiana, I think Mississippi. And I can't remember whether it was Arkansas. I can't remember the third state, but some other Southern cases, this cutting for southern pine beetles in the wilderness areas was, was being challenged by the Wilderness Society. And the court, and Judge Parker, found that in the Texas case as well, the court said, well, that's all well and good, but there is an exception for controlling insects, to, to keeping wilderness areas free of mechanized, you know, motor vehicles and mechanized equipment, there's an exception there. So there was, yeah, that's, you're absolutely right. These other laws just didn't get at, they weren't going to get at the red-cockaded woodpecker.

Mary Ruth Holder [01:07:11] And certainly NEPA wasn't going to get at it, so it wasn't going to.

David Todd [01:07:19] Yeah, OK.

Mary Ruth Holder [01:07:22] It took the Endangered Species Act.

David Todd [01:07:24] Yeah. I guess another couple of things that interests me about the Endangered Species Act and it would be great to hear your, your view of it, since you've actually worked with it. One is that, you know, there are a lot of species that are rare and declining that never qualify, or they're, they're "warranted but precluded." You know, they're, they're sort of in the waiting room for being listed. I think you'd worked with the Jollyville Plateau salamander. And I wonder if you could talk about that, that sort of issue where a species' fate may be decided simply because the Fish and Wildlife Service doesn't have the resources to put it within the Endangered Species Act list?

Mary Ruth Holder [01:08:22] Yeah, I my involvement with the salamander that you mentioned was to help monitor it with City of Austin staff on some of the BCCP preserves that Austin, that are in Austin. So yeah. "Warranted but precluded" - that is a loophole, I guess you'd say in the listing process. The listing of the species and species are there lost in the loop. They're candidates for listing and they can get stuck there for years. And it, it, it takes litigation to move the listing along.

Mary Ruth Holder [01:09:02] It's my understanding, though I can't tell you what they are right now, but that some species have actually gone extinct who are "warranted but precluded." So how that works is when someone files a petition to add a species to the federal list under the Endangered Species Act section 4, Fish and Wildlife has 12 months to make a finding whether or not the listing of it is warranted or not warranted, or warranted but precluded, and warranted but precluded means the listing is warranted so it becomes a candidate species.

Mary Ruth Holder [01:09:40] But the immediate issuance of a proposed regulation to implement its listing is precluded by what they consider to be higher priority actions - other pending proposals to determine whether species are endangered or threatened. And also they have to show that the agency is "making progress" to add these other qualified species to the list.

Mary Ruth Holder [01:10:09] So, staffing and funding comes into play in that "making progress" part, although they technically apply these specific criteria to making a determination about the species, whether it is a priority, and they, those criteria, they sort of juggle these criteria and then they also assign a priority number to it.

Mary Ruth Holder [01:10:39] And so, even though you wouldn't see them say staffing and funding are the problems, you know that is the problem. I mean, you know that is the problem. A few years ago, there were, I have heard Fish and Wildlife people say this. So there were, there were, I think, two tranches, I would say, of species that were petitioned to be listed by a conservation group. And there were like, I don't know how many species at one time, but there were tens and tens, maybe 70 or 100 species at one time - "list these species." And you have to submit, you have to submit paperwork on each species. So that couldn't have been easy to even devise that petition. But when Fish and Wildlife started getting things like

that, they, they really slowed down. That slowed them down, they slowed down and that, you know, that's going to be your staffing and funding problem.

Mary Ruth Holder [01:11:56] And I don't know in retrospect, I don't know, I do know there was a moratorium on listing that was imposed - at least there was one during the, the second Bush, the second Bush's presidency. And that may have been that kind of led up to this, this backlog that the groups said you need to look at these others.

Mary Ruth Holder [01:12:20] But there is a backlog. And sadly, you know.

David Todd [01:12:27] Yeah, it's, it's really intriguing, though, to sort of look under the hood. And I guess no process, machine or paperwork-wise is, is foolproof. You know, one other aspect of the Endangered Species Act that, that seems to have created a, a, if not a loophole, then sort of a weakness, is that it seems like it's often the Endangered Species Act implementation, either for getting species listed or for filing suit for takings and jeopardy decisions kind of has come to rely on pressure outside of the federal government, typically nonprofit groups that, you know, in their own respect have limits on their budget. And, you know, I'm curious if you could talk a little bit about, like with the red-cockaded woodpecker, I think it was fortunate that Sierra Club and Wilderness Society and TCONR all took it upon themselves to, to complain, you know, say this isn't right.

Mary Ruth Holder [01:13:41] Well, I would just say that the role of those nonprofits in being able to use the Endangered Species Act is absolutely key to protecting endangered and threatened species. If it were not for their actions and their hard work, and as you say, they, they are not the most funded of all entities, many species, though, would like the red-cockaded woodpecker, would be extinct or extirpated from the significant part of their range.

Mary Ruth Holder [01:14:16] Because although Fish and Wildlife is also tasked with saving species, it is, like all agencies, not only grappling with budget, you know, budget and staff, but they're also subject to the politics of presidential appointees who run the agency and set its policies, which, as I said, have included moratoriums on new listings and also on federal elected officials holding and manipulating the purse strings.

Mary Ruth Holder [01:14:48] So and then ordinary people like you and me don't have the resources to bring lawsuits. So the people working at nonprofits, who, as I said, are just (I cannot believe the hard work, how hard that is, but I've seen it, it's very, they work very hard), they have to be admired for that and for their courage in taking on what become these really controversial lawsuits. Folks like Ned Fritz, who represented TCONR - they're absolutely vilified. You know, he was vilified in east Texas. And I cannot imagine how, how much even worse that might be in our divided country today.

Mary Ruth Holder [01:15:32] And they don't just, the nonprofits don't just do the citizen suits, but they also have a real important role that I see out here all the time in alerting and enlisting members of the public to help defend the Endangered Species Act itself from efforts by politicians to weaken or repeal it. They also enlist very effectively the public's help in advocating on behalf of an endangered species, for example, submitting public comments to support a U.S. Fish and Wildlife rule to list a species and also maybe comments to stop a potential harmful federal agency action under. So they submit, the public will submit comments under NEPA on an EIS, and the public, they help, they get help from the public in advocating that an agency take an action to help an endangered species like here, maybe

removing dams that impede the movement of salmon. So they're very, very important. They are the key.

Mary Ruth Holder [01:16:49] You know, you, you mentioned the, the, I guess the, the difficulty for non-profits, particularly in recent years, and I think even going back a number of years. I think I remember hearing stories that Ned Fritz had to drive around in the back of vehicles with a cloak or something wrapped around him when he was in East Texas because he, like you said, he was fearless about giving talks, but he was not popular.

David Todd [01:17:21] But the question I wanted to ask you was that it was not always so. And I think that the Endangered Species Act, as you said, with a great deal of foresight, was passed with, I think, a high degree of bipartisan support.

Mary Ruth Holder [01:17:39] Yes.

David Todd [01:17:40] And, and then something happened, because, you know, in more recent years, there have been just repeated efforts to repeal it or to restrict its scope or cut its funding. What do you, can you speculate about what's, what's happened with this law and the, the politics that surround it?

Mary Ruth Holder [01:18:01] Yeah, well, I think it's still a popular law, despite everything. But the timber industry, the oil industry and other, other industries are powerful, moneyed special interests who absolutely have the financial wherewithal to enlist politicians to fight for them in their battles, to retain and use and deplete landscapes and natural resources for commercial gain, even on public lands. So they view the Endangered Species Act as an impediment because it has been used to thwart their designs to exploit the environment. They know the Act is popular. They have known that. And so sometimes the methods, their methods for weakening the Act, are subtle and may not be readily apparent to the public. And so non-profits, to go back to that question, are, have to stay on top of that, and have to alert the public that there's an attempt to weaken it. So, that's why it's a regular target.

Mary Ruth Holder [01:19:27] You know, in the, in the case of the red-cockaded woodpecker, like the case of the spotted owl, the timber industry complained and then enlisted the help of politicians to say this, you know, protecting these species is going to ruin the economy. It's going to mean the loss of jobs and so on. And that is interesting, because from my experience now, after all, yet to these many years, it is just always, that's like the go-to argument, right?

Mary Ruth Holder [01:20:13] The first thing that happens, it's the timber industry, the oil industry, whether you have, you know, conservation laws or, or an attempt to protect species, or you have a particular attempt to for worker safety, to protect worker safety. The very first, the very first and go-to argument of those industries is it's going to, jobs will be lost. You know, it's a, it's a parade of horrors, they call it. Jobs will be lost. It's going to destroy the entire economy of the entire world. Or not the entire world, the entire area of the entire United States.

Mary Ruth Holder [01:20:55] And, and, and I, I don't know how they get away with it, but, you know, you have to meet those with the reality that, "no, jobs are not going to be lost." And of course, the present administration is, are in stages, while trying to turn things around so that the jobs we make a what's called "just transition" from jobs in destructive or, you know, resource-extraction industries are turned around to provide things like clean energy and, you know, restoring habitats, restoring things. Those do have jobs.

Mary Ruth Holder [01:21:46] And it's just, but that's just a go-to argument that the big, the powerful industries make.

David Todd [01:21:54] I see. So the politics are, are tied with the economics. And, well, can we talk a little bit about the, the Forest Service? We've spoken some about the agency before, but I think it's intriguing, and you touched on this before, but maybe you can just explore it a little bit more: how the Forest Service seemed to neglect the advice of its own staff and the import of its own guidelines and maybe some of the advice from, from the Fish and Wildlife Service consultations too. Why, why do you think they got to be so isolated?

Mary Ruth Holder [01:22:49] So isolated...

David Todd [01:22:51] Well, maybe "isolated" isn't the right word, but, I don't know, are willing to disregard advice that is coming from within and also some of its companion federal agencies.

Mary Ruth Holder [01:23:05] Well, yeah, we did talk about those to some extent about the Forest Service, why it was doing what it did. And I guess I'd add that agencies like the Forest Service are not only grappling with their own organic statutes, that those laws that establish them and directed their actions. But I think they also just view their, that primary mission as supreme, and meeting that mission also meant they could go back to Congress and proudly say, we're meeting the mission you gave us. And so their funding was secure from Congress. Then there, of course, are the close ties to the timber industry. But what happened was meeting the requirements of the ESA was not a priority.

Mary Ruth Holder [01:23:58] But you know what? Today, it seems like, and I hope it's true, I hope it's true, many more agencies, agencies are getting the picture over this and especially after the litigation they've seen. And they seem to be hiring biologists to help them comply with environmental laws. What I've noticed, at least in the area, the parts here where I live, is that many more young people are going into careers as biologists that work for those agencies and they work for the agencies and tribes to help them protect the natural environment. So I'm hoping that the agencies get it, you know, and but then, of course, it's going to depend on the direction that, well, I guess I'd say elected leaders that also control the agencies. You know, it's going to depend on that as well.

David Todd [01:25:02] Sure. You know, you're in a really interesting position, I mean, having grown up in Louisiana and spent time in Texas, but now living up in the Northwest, you've gone from one forest and an area of the timber industry to another. And, and I was curious if you could talk a little bit about the controversy over the red-cockaded woodpecker and how it came about pretty close to the same time that that your area, up Northwest, was dealing with the northern spotted owl. And I think also there was the Mexican spotted owl down in the Southwest where there were these controversies over protecting a species and, and also sort of getting the lumber out of these forests.

Mary Ruth Holder [01:25:59] Yeah, well, I can talk a little bit about the northern spotted owl and the similarities, because they certainly do have similarities. As you said, these, these cases came about at about the same time. Well, yes and no. In the cases of the species, of course, they're both dependent on old-growth trees and these species of trees, and the areas where they live were targeted by the timber industry for clearcutting. And therefore, the cases were

both controversial because the timber, the Forest Service, was supported by the timber industry in that clearcutting.

Mary Ruth Holder [01:26:45] But the context in which those cases arose differed in a couple of respects. First of all, a lot, the first lawsuit about the owl under the Endangered Species Act was so it could get listed. So there was no protection for it against forestry practices. When the first, when that spotted owl case was filed in 1987, the old growth forest's cutting, for several years leading up to that, was already the subject of great concern to members of the public. There had been numerous protests to stop clearcutting of the old-growth forests and a judge in one of the, those cases about the owl called the bird a symbol in the battle to save remaining old-growth forests.

Mary Ruth Holder [01:27:45] And we're talking here about cutting down forest where the trees are so old, so large, that the trees themselves are ecosystems, supporting a whole complex of communities, of various plants and animals. And now, of course, we're learning more and more from the work of scientists like Suzanne Simard that they, those forests, operate as a cooperative community of trees, via networks of mycorrhiza beneath them. So it was, the cutting that was doing, was being, it was fragmenting them and creating this kind of fragmented quilt-looking thing of forests. And the trees that were being cut, because the bird was not listed, the trees being cut were trees being used by the owls for nesting and they were included.

Mary Ruth Holder [01:28:44] So for the owl, like the woodpecker, most old-growth habitat on private lands had already been cut and federal agencies managed about 90 percent of the remaining owl habitat. So the owl was listed then because of the lawsuit, as threatened in 1988. And of course, the RCW was listed in 1970.

Mary Ruth Holder [01:29:13] Interestingly, for the owl, the courts were involved, not only in the failure to list the species, but eventually under nearly every single provision of the ESA - designation of critical habitat, issuing biological opinions in the absence of critical habitat, interagency consultation and many more. The timber companies and the politicians, some politicians, fight the lawsuits tooth and nail every step of the way. And in those cases, the timber industry even brought their own lawsuits. And as I said earlier, in both cases, the timber industry said this, you know, protecting that species would ruin jobs. And of course, the jobs, by the way, in timber, the timber industry jobs, still are here. And, so the bigger picture, like I said, is that that is a sort of go-to argument, but that was used in both cases, the jobs loss argument.

Mary Ruth Holder [01:30:25] The owls, sadly, at present, one difference is: their populations are declining and individual owls are so hard to find that the, the agencies and the Forest Service, the biologists and the national parks have had to use a totally new way of finding any owls, using it's called "remote acoustic monitoring." And the reason for that is that the lawsuits were there to save them. But the reason for this is a new, relatively new, character is on the scene - the barred owl. They've moved into these Northwest forests from the East Coast. Those barred owls are larger and more aggressive than the spotted owls, and they compete for food and they are, have been observed to harass and even kill a spotted owl.

Mary Ruth Holder [01:31:24] So, it's not looking good for them, it looks like right now they're on the course toward extinction and I'm sure the wildfires aren't helping.

David Todd [01:31:43] Let's talk a little bit about just politics within this state of Texas. I think you talked a little bit about the, the problems in the Northwest and how those connect with those in Texas. But it sounds like, since your term at the Attorney General's Office back in the '80s, it's become much more unusual for the Attorney General's Office to, to participate in cases like that of the red-cockaded woodpecker, lining up with non-profit conservation groups against a powerful industry. What, what do you think has happened? I mean, a lot has happened, but can you put your finger on some of the changes that you've seen since those days at the A.G.?

Mary Ruth Holder [01:32:37] Well, let me just first say that the Texas A.G. at that time challenged a federal agency and Attorneys General across the country have, and still do have, the authority to and do challenge federal agency actions and decisions in their state.

Mary Ruth Holder [01:32:55] But as you say, it's less usual in our time. I think, I think a, you know, it's just what you say, politics. Well, the country's different now and politics are different now. And I would hesitate to say that it's, that no attorney general anywhere has sided with non-profits on cases against maybe, say, the oil industry or, or something. I think, I think that does happen. But it's just less usual. And I I'm not a political scientist either, but I just feel like it's, it's the times we live in. I think politicians, you know, probably after those cases, some of them read the tea leaves and said, "Well, we can't you know, this will be unpopular. We can't get involved in this."

Mary Ruth Holder [01:34:06] So but another, just another matter that I got involved in was that sometimes Attorneys General sort of congregate together and they will file an amicus brief or, or participate, especially at appellate courts, as a, not especially, but in federal courts, at the appellate level, in support of something or against something. And another case that we were involved in was serving, having an amicus brief on behalf or, again supporting NRDC in a case that I think ultimately went to the Supreme Court, as I recall, that was arguing that endangered species, the endangered species that migrate across international boundaries are still protected under the Endangered Species Act. In particular, our interest was the golden-cheeked warbler's migration. So that was, so we continue to do that.

Mary Ruth Holder [01:35:22] And it's just the times we live in, the sort of, I don't know, the atmosphere, the people who are being elected to office have maybe more, have values that inclines them more towards, you know, resource extraction, than preservation or conservation, just that.

David Todd [01:35:52] You know, just that, all that.

Mary Ruth Holder [01:35:54] All that.

David Todd [01:35:56] So, so many factors. So maybe while we're discussing the red-cockaded woodpecker, we might want to return to talking about its, its protection and the different ways that that's been done. You know, I think that some people charged that it was, you know, sort of specific to that particular creature and that protecting the red-cockaded woodpecker spilled over to managing the forest.

Mary Ruth Holder [01:36:39] And other people, you know, look at the kinds of management that's come out of court cases and out of the agency, saying that, well, there's all this really intensive intervention, you know, that, that's very, sort of, artificial. And you're coming in and

putting in these, these pre-built cavities for them to nest in, or to relocate them or, you know, to put metal flashing around trees so that snakes can't climb up them.

Mary Ruth Holder [01:37:16] Where do you fall down about that? I mean, is this, are the interventions that are being done through court cases or through agency management too focused on this one species, or not focused enough? Or what would you say?

Mary Ruth Holder [01:37:34] Well, I, I guess I agree, or I adhere to the view that the, the species, the red-cockaded and that sort of species are, I guess some say, keystone species or just, I would say indicators of the health of the forest ecosystem and the critical, and a critical component, of course, of the ecosystems they are part of. One species like that, especially given its, its status as a keystone species within it, when a species like that, within an ecosystem doesn't decline in the absence of something being awry in the entire ecosystem in which it evolved.

Mary Ruth Holder [01:38:25] So, its recovery, it seems to me, should take into account the components needed to sustain that species, and those components would include a healthy ecosystem, all the way around in which would thrive. And we talked about the, I think I may have not made that clear, but the state of those forests. When the, the European settlers began colonizing them, that is their natural state, that is what they should be like. And so when you protect a species like the red-cockaded woodpecker, you are protecting, protecting the ecosystem, the natural ecosystem.

Mary Ruth Holder [01:39:16] But you touch on something else, too, there. And that is whether or not, right now, conservation efforts for the, for the red-cockaded woodpecker do involve intensive management by human beings. And I think, and we wonder is that, well, I should explain, you know, you mentioned the artificial cavity, artificial cavities that are used. And it's interesting to look at how those came about. They came about because Hurricane Hugo in 1989 destroyed, I think it was 87 percent of the cockaded cavities, or colonies, I think it was, on the Francis Marion National Forest. So then some researchers in North Carolina devised these artificial cavity boxes. It was an emergency and it was we've got to just do this. Well, lo and behold, that worked. The population of those woodpeckers began to come back.

Mary Ruth Holder [01:40:40] And I think I think I read here that there's something like three thousand artificial cavities on the Francis Marion National Forest. That's extraordinary. And, then, of course, since then, there's been other hurricanes - Katrina in 2005, and there was one in 2018, which destroyed habitat and cavity trees in Florida and those boxes were used. But now they are, they are a widespread practice. I don't know how many of those are on the Texas National Forests. So I'd be interested in knowing. And then, as you say, so this is now not the natural.

Mary Ruth Holder [01:41:28] And then, two, prescribed burning is being done, which is a good thing, because that restores that natural ecosystem by getting that was created like that by lightning strikes and indigenous people doing control burning. So that's a good thing. And because fire suppression is used so much for the rest of the forest, you know, you can't direct lightning strikes into the proper areas for the bird's habitat, so there you are using the prescribed burns. But it's creating those natural conditions in those areas.

Mary Ruth Holder [01:42:20] And then, like you say, translocating like pairs of red-cockaded woodpeckers. And I think they, there was a translocation of a pair to one of the state, Texas

state forests, to augment whoever, you know, whatever woodpeckers are there, augment numbers.

Mary Ruth Holder [01:42:44] You know, you can't just sort of stop everything. Restoration has got to happen and restoration is going to require human intervention. But it's those artificial nest cavities or cavity boxes that I think bother people. And there was a 20, was it 2020, proposal to down list the species from endangered to threatened under the Trump administration. And looking at that, and I haven't read that rule thoroughly, but definitely that down-listing is relying on those cavity boxes.

Mary Ruth Holder [01:43:30] Well, do you really say something is recovered if it's living in cavity boxes, you know, versus letting tree, you know, well, letting trees grow up, letting them have access to, you know, trees that they can, trees with red heart fungus, longleaf pines.

Mary Ruth Holder [01:43:56] You know what, will it ever really be independent? Can it live independent of those kinds of activities?

Mary Ruth Holder [01:44:09] On the other hand, one of the things that in reviewing what is happening now kind of gave me hope, and it's sort of poignant, is the, all of the efforts of all of the people, people who obviously love these birds, they love the species, all the efforts, you know, manmade or not, to try to save them. That's, that's a positive thing. People appreciate them. People who want to save them.

David Todd [01:44:44] That's a nice point. I mean, I think I'm following you. That would down-listing be appropriate if this is a forest far different from what the red-cockaded woodpecker saw, you know, in pre-European settlement, and, you know, with trees, there were two, three hundred years old. And instead what we have is 50-, 40-year old trees with prefabricated boxes in them that they're supposed to use. And it's, but it all does represent, I guess, either this machinery of agencies and litigation, or people's love for the, for the bird. It's some of both, I guess.

Mary Ruth Holder [01:45:32] When you look back over your years of, of working on this litigation with the red-cockaded woodpecker - it's certainly a while back - but are there any highlights of that past effort that come to mind, or did that experience give you some perspective on the future for the bird?

Mary Ruth Holder [01:45:57] I would say the highlights would have to be seeing a red-cockaded woodpecker. Let me back up. At the time that that report came out, the Conner/Rudolph report came out, in Texas anyway, there were only one hundred and thirteen birds left. So seeing a red-cockaded woodpecker foraging on a pine tree in the Kisatchie National Forest of Louisiana near Alexandria, this was, I can't remember whether it was during the case, well, it was during some part of the case. Walking through a Texas, one of the Texas National Forests with a former logging company contractor, and seeing a cavity tree that had been downed in a storm, that tree was a victim of what they call windthrow, because it was really near a clearcut, and we found on the ground shattered pieces of a resin well that a woodpecker had created to protect its cavity from rat snakes.

Mary Ruth Holder [01:47:04] It was heartbreaking then. It's still heartbreaking now.

Mary Ruth Holder [01:47:10] And then Judge Parker's order. It's a wonderful read. I highly recommend it. It's poignant where he describes the woodpecker and its plight. It's very

respectful to the parties, to the witnesses. It's humorous in places. And then I guess I would say just what's memorable is the gift of getting to work on the species behalf. It was a gift.

Mary Ruth Holder [01:47:41] My perspective on the future? We wouldn't be where we are today. Artificial cavities are not without those lawsuits. And I know that there's many more numbers of birds today. I saw one estimate. Well, actually, I think the estimates kind of differ and it may relate to the impacts of hurricanes. I don't know. But there may be, across the South, there may be something like 6000 family units and maybe as many as fourteen or fifteen thousand individual birds.

Mary Ruth Holder [01:48:21] But you know what, David, as we're speaking, in the age of mostly unchecked greenhouse gas emissions and climate change, the future of that woodpecker and other species, endangered or not, and even our own human species is definitely uncertain. Part of that for these birds, of course, is that more frequent and intense hurricanes and those things spawn tornadoes. So, and then, of course, out here, the wildfires for the spotted owl. Will any species survive? Will ours?

Mary Ruth Holder [01:49:00] And I'd say if we do manage to survive, we will most certainly be poorer for the loss of our fellow creatures on this planet, like this charismatic little red-cockaded woodpecker.

David Todd [01:49:17] That's so true.

David Todd [01:49:21] Well, I just had two more questions if you have a moment to spare. I think it's been so interesting to read about your background and you've had so many different efforts on behalf of the natural world, working for conservation, you know, litigating in courts, and volunteering on government commissions, participating in citizen science, being a grassroots activist.

David Todd [01:49:53] Is there any way you can sort of tie those together, or, or distinguish them as being sort of part of your nature and part of your interest?

Mary Ruth Holder [01:50:04] Well, those government, government commissions you're talking about, like the City of Austin Parks Board, Environmental Board, those are opportunities to make recommendations to the City Council for the, or to the city manager, really, and even staff, for the restoration and conservation of native species of animals and plants, and local parks on maybe the BCCP or a development project that might impact that.

Mary Ruth Holder [01:50:39] And I guess citizen science, I was really lucky to go to the Capital Area Master Naturalist program, and as a result of that, it was a wonderful six or seven week course, I worked on, as a volunteer, monitoring the Jollyville Plateau salamander with BCCP staff, monitoring the golden-cheeked warbler, in Austin's Emma Long Park. And I worked on the bracted twistflower with Texas Parks and Wildlife, BCCP and Lady Bird Johnson staff and botanist. And those efforts were great. They were all to protect the species and help them thrive for the long run. So I think all of those things are very important for conservation.

Mary Ruth Holder [01:51:34] And of course, grassroots activism is, is vital for persuading agencies and elected officials to protect species and to protect the natural world. I think all of those opportunities for me are, have been important. They've been very rewarding and I wish more people would participate in them.

David Todd [01:52:03] Yeah, strength in numbers. But nice to hear about all that you've done, and thank you for that. And thank you for this interview.

Mary Ruth Holder [01:52:18] Before we close, I always like to ask folks if there's anything that might have occurred to them that they'd like to add, that we might not have covered before.

Mary Ruth Holder [01:52:29] I think I've pretty well covered, I think I've pretty well covered things, and gotten to give my opinion about things.

Mary Ruth Holder [01:52:39] Thank you, David.

David Todd [01:52:41] Oh, well, thank you. It's, it's, it's really great to hear this, the story of your life and career, to date, and also just how it feeds into building a public history of the many things you've been involved in. So thanks for that.

Mary Ruth Holder [01:53:01] You're welcome. You're welcome.

David Todd [01:53:02] I wish you a happy day. Some of this stuff is a little bit sobering, but I hope you get to walk the, the rosy path and enjoy the outdoors where you are today.

Mary Ruth Holder [01:53:17] Thank you. You too.

David Todd [01:53:20] All right. Well take care, Mary Ruth. And let's stay in touch, OK?

Mary Ruth Holder [01:53:24] OK, you too. You too. You take care too.

David Todd [01:53:27] OK, yeah.