



Spring 2011

Showdown at Catron: Cows, Wolves, and the Ecology of Public Lands Policies

Raymond B. Wrabley Jr.

Recommended Citation

Raymond B. Wrabley Jr., *Showdown at Catron: Cows, Wolves, and the Ecology of Public Lands Policies*, 51 Nat. Resources J. 119 (2011).

Available at: <https://digitalrepository.unm.edu/nrj/vol51/iss1/6>

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

RAYMOND B. WRABLEY, JR.*

Showdown at Catron: Cows, Wolves, and the Ecology of Public Lands Policies

ABSTRACT

Political landscapes and natural landscapes interact in an ecological process that produces public lands policies. These policies evolve as the landscapes change. This ever-changing process is illustrated by the conflict in western New Mexico over the reintroduction of the endangered Mexican gray wolf. As the interests of wolf advocates and wolf opponents collide, particularly in Catron County, wolf release, relocation, and removal policies develop; the power and roles of local, state, and federal agencies shift; the skill, effectiveness, and technical sophistication of organized interests change; and the values and preferences held by the public evolve. This article examines this ecological public lands policymaking process through the showdown in Catron County.

“My own conviction on this score dates from the day I saw a wolf die. . . . We reached the old wolf in time to watch a fierce green fire dying in her eyes.”¹

—Aldo Leopold, *A Sand County Almanac*

“D and I rode and found another dead baby calf. . . . Lots of wolf bites. The wolves had torn off both of the babies [sic] ears and jerked the tail off. It was a VERY ugly scene.”²

—Catron County rancher, 2005

INTRODUCTION

America’s public lands—its forests, deserts, grasslands, mountains, and rivers—have been the sites of conflict over several centuries.³ These conflicts have migrated across the political and natural landscapes, moving from the land to the legislatures to the courts to the bureaucra-

* Professor of Political Science and Chair, Division of Social Sciences at the University of Pittsburgh at Johnstown.

1. ALDO LEOPOLD, *A SAND COUNTY ALMANAC: WITH ESSAYS ON CONSERVATION FROM ROUND RIVER 138* (Random House Digital 1990) (1949).

2. Rancher, Catron County, N.M. (2005) (excerpt from anonymous rancher e-mails compiled by rancher Laura Schneberger) (on file with author).

3. MICHAEL P. DOMBECK, CHRISTOPHER A. WOOD & JACK E. WILLIAMS, *FROM CONQUEST TO CONSERVATION: OUR PUBLIC LANDS LEGACY* (2003).

cies and to the marketplace, producing the policies that govern these protected areas today.

The processes of policymaking and policy change have been likened to systems in which political demands or inputs get processed into policies or outputs, which, in turn, affect the system and its environment, generating new inputs.⁴ More recently, scholars have borrowed from evolutionary theory and described the policymaking process as one of punctuated equilibrium, arguing that the incremental nature of policy change masks a more fluid and sporadic process of creation and destruction of policy monopolies.⁵ In this article, the policymaking process involving our public lands is portrayed as an ecological one. Ecologists have characterized natural landscapes as complex and dynamic, constantly subject to varying degrees of disruption to which species exhibit a wide range of adaptations.⁶ The process of ecological change is “highly local and contingent on a particular sequence of historical events, and the effect can create a very heterogeneous spatial pattern on the land.”⁷ Similarly, the political landscape—the laws, regulations, institutions, ideologies, organized interests, officeholders, activists, and political processes—is complex, dynamic, and subject to disruptions. These disruptions also lead to adaptations and to heterogeneous policymaking patterns that are local and contingent upon a particular sequence of historical events. This is reflected in the evolution, dynamism, and diversity of our modern public lands’ policies.

This ecological policymaking process creates regional and local adaptations in response to political and ecological forces on the ground. Critics contend that these local changes too often reflect the power of special interests and their cozy relationship with regulators, allowing policies to circumvent democratic accountability.⁸ Yet this fluid policymaking process has been resistant to various efforts, over decades, to impose greater national statutory and regulatory control. However, despite its incremental and adversarial nature, and its tendency to move in response to pressures from organized interests, the process has allowed

4. DAVID EASTON, *THE POLITICAL SYSTEM: AN INQUIRY INTO THE STATE OF POLITICAL SCIENCE* (1953).

5. FRANK R. BAUMGARTNER & BRYAN D. JONES, *AGENDAS AND INSTABILITY IN AMERICAN POLITICS* 9 (1993).

6. Robert E. Cook, *Do Landscapes Learn? Ecology's "New Paradigm" and Design in Landscape Architecture*, in 22 *DUMBARTON OAKS COLLOQUIUM ON THE HISTORY OF LANDSCAPE ARCHITECTURE* 115–32, available at http://www.doaks.org/publications/doaks_online_publications/Environmentalism/env5.pdf.

7. *Id.* at 126.

8. CHRISTOPHER McGRORY KLYZA & DAVID J. SOUSA, *AMERICAN ENVIRONMENTAL POLICY, 1990–2006: BEYOND GRIDLOCK* (2008).

adaptations and heterogeneous policymaking patterns that fit the historical political ecology in the United States.

The ecological nature of the policymaking process can be seen in the longstanding conflict in the Southwest between cows and wolves. Cattle came to this region with the first European settlers, and the native Mexican gray wolf (*Canis lupus baileyi*) quickly found new prey. In the conflict that followed, the wolf was the loser, as state and federal policies led to its extirpation from public (and private) lands, primarily for the benefit of cows. But the wolf's loss was not permanent. Decades of struggle led to victories for advocates of the wolf, first with the passage of the Endangered Species Act (ESA) in 1973, then with the new national policy of restoring the wolf to its native habitat under federal protection.⁹

For many westerners, the reintroduction of the wolf into their ranching and living spaces was seen as a threat to their livelihoods and way of life, which they were prepared to vigorously defend. Their stiff resistance to the new wolf policies re-energized an old conflict. This article tells the story of one element of this conflict: the showdown between ranchers and the federal government over cows and wolves in Catron County. An examination of the changing natural and political landscapes in western New Mexico as they relate to this conflict sheds light on the ecology of public lands policy, illuminating how legislatures, bureaucracies, courts, interest groups, scientists, and various levels of government shape land use policies—and how the land shapes those policies in return.¹⁰

Part I of this article provides a brief history of public lands policies in the United States, emphasizing the ecological nature of the policymaking process. Part II examines the development of public lands cattle ranching in Catron County and the surrounding political climate that exists to this day. Part III describes the Mexican gray wolf, a native of the Southwest, and the federal policies that led to its extermination in order to protect the ranching industry. Part IV explains the development of federal laws governing both cattle grazing and endangered species protection on federal lands and the conflicts they create. Part V describes

9. Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2006).

10. For some richly textured analyses of the politics of wolves, see MARTIN A. NIE, *BEYOND WOLVES: THE POLITICS OF WOLF RECOVERY AND MANAGEMENT* (2003); Edward A. Fitzgerald, *Lobo Returns from Limbo: New Mexico Cattle Growers Ass'n v. U.S. Fish & Wildlife Service*, 46 NAT. RESOURCES J. 9 (2006); Dale D. Goble, *Of Wolves and Welfare Ranching*, 16 HARV. ENVTL. L. REV. 101 (1992); MICHAEL J. ROBINSON, *PREDATORY BUREAUCRACY: THE EXTERMINATION OF WOLVES AND THE TRANSFORMATION OF THE WEST* (2005). While this article focuses on the controversies in Catron County, the conflicts over Mexican wolf recovery play out more broadly across New Mexico and Arizona and in the national policymaking institutions.

the showdown between ranchers and their local supporters against the federal government and advocates of wolf reintroduction. Part VI analyzes this conflict, examining how policies evolved through the interactions of scientists, bureaucrats, judges, lobbyists, legislators, activists, and the changes taking place on the land. Lastly, Part VII, the conclusion, asserts that, despite many criticisms that the public lands policymaking process is marred by adversarialism, delay, incrementalism, litigation, and excessive politics, the process also supports experimentation, learning, adaptation, and cooperation that are all important elements of effective policy implementation.

I. THE ECOLOGY OF PUBLIC LANDS POLICYMAKING

Robert Keiter, the distinguished author and law professor, has argued that “public lands are both a natural and a political landscape.”¹¹ Also true is that the natural and political landscapes of the public lands interact in what might be described as an ecological relationship. The policies produced in the political landscape shape the natural landscape of the public lands; what the land looks like, and what it does, has been shaped by government policies regarding its use. For example, policies to promote settlement and agriculture turned grasslands into croplands and homesteads, and later, in many places, into highways and suburbs. These policies also put dams on rivers, and lakes into valleys. Policies to promote timber harvesting and mineral extraction turned forests into meadows or deserts, and deserts into moonscapes. Similarly, the natural landscape also shapes policy; what policy looks like and does has been shaped by the land, its topography, biology, geology, and climate. The aridity of the lands west of the hundredth meridian has shaped water and development policies. The “forage” growing on western lands shaped grazing policies, and the natural wonders of the landscape shaped preservation policies.

Dynamism, rather than stasis, characterizes both of these landscapes—the natural and the political. In the natural landscape, policies that govern the land change as the land changes. When flora and fauna are introduced, or when native flora and fauna no longer exist, policies regarding these invasive and endangered species shift. In the political arena, policies change especially as the political landscape changes. Changes in presidential administrations, and their bureaucratic rule writers, change public lands policies. The emergence of new political values and priorities alters policies. Changes in the relative strengths of the political players on the land moves policies—as the power of “invasive”

11. ROBERT B. KEITER, *KEEPING FAITH WITH NATURE* 12 (2003).

eastern transplants eclipses the power of the “endangered” beneficiaries of the western lords of yesterday.

Public lands policies are generally described as evolving through several overlapping historical stages. The initial period of land acquisition of the United States was accompanied by an “Age of Disposition” (1780s–1934), during which the federal policy was to sell or give away hundreds of millions of acres of public lands.¹² Purchases from foreign governments, cessions from the new state governments, and seizures from the native occupants brought vast and diverse lands into ownership and control by the United States. The U.S. Constitution provided congressional authority over federal property,¹³ but in reality the institutional capacity to directly control the lands was limited. The prevailing ideological predisposition was to put public lands into the hands of private citizens—homesteaders, miners, veterans, railroad owners, and others—to raise revenue for the central government, create economic opportunity for citizens, settle the land, and solidify federal claims to the territory during these early decades of the country.

The policies and legacies of the Age of Disposition were also shaped by the various interests moving across the political and natural landscapes, through the halls of Congress and the hills of the remote country. Railroad companies, land speculators, timber, mining, and ranching corporations all pressed for favorable subsidy and protection policies. Individuals looking to profit, or in some cases to get lost, also found their way on to the public lands, creating conditions on the ground that sometimes had to be accommodated.¹⁴ Native tribes fighting fiercely to keep their place on the land forced adaptations in military, migration, and settlement policies.¹⁵

The process by which public lands were conveyed into private hands during this period has been described as one of “simplicity” under which the government “opened the gates, stepped back, and allowed American ingenuity to take over.”¹⁶ These generalizations capture some

12. ROBERT L. GLICKSMAN & GEORGE CAMERON COGGINS, *MODERN PUBLIC LAND LAW IN A NUTSHELL* 13 (3d ed. 2006). The dates of the various “ages” of public lands policy are subject to some disagreement, but those cited in this article are from Glicksman and Coggins. See also DOMBECK, WOOD & WILLIAMS, *supra* note 3.

13. U.S. CONST. art. IV, § 3, cl. 1.

14. See the Preemption Act of 1841, 5 Stat. 543, which allowed squatters to preempt public lands that had not yet been offered for sale.

15. See PEKKA HAMALAINEN, *THE COMANCHE EMPIRE* (2008), for an excellent history of the long period during which a huge segment of the land within U.S. boundaries was controlled by native tribes.

16. CHARLES F. WILKINSON, *CROSSING THE NEXT MERIDIAN: LAND, WATER, AND THE FUTURE OF THE WEST* 17–18 (1992).

basic elements, but they obscure the fact that the policies that emerged during the Age of Disposition were the product of a political process that included conflict and compromise, action and counteraction, and pressure and counter-pressure. This process was often more organic than mechanical, more complex than simple—and left numerous questions unanswered: What lands became state lands as states entered the union? Who owned the minerals under the land or the land under the rivers? Could individuals purchase land controlled by native tribes? Could homesteaders or miners divert water from waterways? Could stock owners graze cattle and sheep on unclaimed range and forests? These issues were debated and decided in courts, Congress, executive agencies, and in personal, sometimes violent, confrontations, all of which sculpted the political topography.¹⁷ This topography guided the flow of policies and actions as the “gates” to the public lands were thrown open and shaped the consequences: The most productive lands were privatized, land ownership patterns resembled “cartographic chaos,” native people were removed to reservations, forests were cutover, grasslands were overgrazed, cattlemen clashed with sheepmen and farmers, mining towns boomed and then busted, and users came to expect that most federal lands would eventually be privatized or at least remain open for private uses.¹⁸

The political and natural landscapes that emerged from the Age of Disposition laid paths to the “Age of Conservation” (1872–1964), which is characterized by the retention and scientific management of vast lands and their resources by the federal government.¹⁹ This new era did not completely bulldoze the political and natural landscape features created during the prior period, but it significantly reshaped the political and natural lands. More dams, levees, and reservoirs aimed to control rivers and water use on public lands, and more forests opened to logging with an eye toward remaking them as “tree farms” or “wood factories.”²⁰ New laws from Congress created new agencies in the executive branch, or new missions, with new regulations, and new relationships with various interests. According to environmental historian Samuel P. Hays, “Conservation cannot be considered simply as a public policy, but far more

17. CHARLES DAVIS, *WESTERN PUBLIC LANDS AND ENVIRONMENTAL POLITICS* (2d ed. 2001).

18. GLICKSMAN & COGGINS, *supra* note 12, at 25.

19. *Id.* at 13.

20. SAMUEL P. HAYS, *CONSERVATION AND THE GOSPEL OF EFFICIENCY: THE PROGRESSIVE CONSERVATION MOVEMENT, 1890–1920*, at 27 (Atheneum ed., Harvard Univ. Press 1979) (1959).

significantly, as an integral part of the evolution of the political structure of the modern United States.”²¹

The political and natural landscapes that emerged from the efforts of conservationists, however, were both tenacious and complex. The creation of national forests and a U.S. Forest Service (USFS) in multiple legislative and executive steps over several decades reflected not only a commitment to scientific forestry but also the influence of grazing and timber interests.²² The creation of grazing districts, and ultimately a Bureau of Land Management (BLM), aimed for conservation-oriented range management but also thoroughly integrated local ranching interests into decision-making.²³ Several decades into the Age of Conservation, critics argued that resource management had become politicized as private interests captured public power.²⁴ According to Hays, “Resource users played a fundamental role in shaping the character of development in a manner contrary to the aims of conservationists.”²⁵

The Age of Conservation, then, did not produce a conservation monoculture in the management of public lands. The political landscape upon which conservation policies developed was more local, contingent, open, fluid, and diverse than rational planners might have hoped. Conservation policies and institutions adapted to the existing political climate and remained open to new disruptions. By the 1960s, preservationist streams that had trickled through American land management history were flowing more forcefully through the political landscape.²⁶ From various headwaters, political forces pressing for a more participatory politics and more “environmentalist” public policies gradually brought forth an “Age of Preservation” (1964–present).²⁷ Laws were passed reflecting the emergence of a more politically powerful movement to protect nature *from* use and development.²⁸ A burgeoning environmental movement contributed to the passage of the National

21. *Id.* (Preface).

22. WILLIAM D. ROWLEY, *U.S. FOREST SERVICE GRAZING AND RANGELANDS: A HISTORY* (1985).

23. JAMES R. SKILLEN, *THE NATION’S LARGEST LANDLORD: THE BUREAU OF LAND MANAGEMENT IN THE AMERICAN WEST* (2009).

24. ROBERT H. NELSON, *PUBLIC LANDS AND PRIVATE RIGHTS: THE FAILURE OF SCIENTIFIC MANAGEMENT* (1995).

25. HAYS, *supra* note 20, at 275. *See also* KEITER, *supra* note 11, at 20 (discussing progressives).

26. PHILIP SHABECOFF, *A FIERCE GREEN FIRE: THE AMERICAN ENVIRONMENTAL MOVEMENT* (2003).

27. *Id.*

28. *See* Wilderness Act of 1964, 16 U.S.C. §§ 1131–1136 (2006); National Wildlife System Administration Act of 1966, 16 U.S.C. §§ 668dd–668ee (2006); Wild and Scenic Rivers Act of 1968, 16 U.S.C. §§ 1271–1287 (2006).

Environmental Policy Act (NEPA) in 1969, the ESA in 1973, and the National Forest Management Act and the Federal Land Policy and Management Act (FLPMA) in 1976—all of which require land management agencies to engage in comprehensive planning, with public input, in order to balance multiple land uses, including environmental and preservation uses.²⁹

The political landscape of the Age of Preservation included nationally mandated land use standards, a land use planning process open to influence from organized interests, and regular resort to the judiciary by those interests to force or block bureaucratic decisions.³⁰ The landscape had become decidedly adversarial and old public land users—loggers, ranchers, the oil and gas and coal industries—found their old dominance increasingly eclipsed by new environmental interests that had come into “full bloom.”³¹ Bureaucratic agencies and administrative processes became central arenas for the conflicts that moved public lands policies.³²

By the end of the twentieth century, public lands policies bore the marks of the ecological development of the political landscape over almost 200 years. “Modern” environmentalist interests and values were reflected in the preservationist thrust of endangered species policies, monument designations, and wilderness expansion, as well as in the shifts in management priorities in some national forests, parks, and BLM lands. The older processes and values, however, still showed potency, as ranching and mining interests successfully blocked reforms in the 1990s, liberal leasing policies significantly increased oil and gas drilling on public lands from New Mexico to Montana, and management responsibili-

29. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347 (2006); Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2006); National Forest Management Act of 1976, 16 U.S.C. §§ 1600–1614 (2006); Federal Land Policy and Management Act of 1976 § 1701(a8), 43 U.S.C. § 1701 (2006) (requiring that public lands be managed to “protect the quality of air and atmospheric, water resource, and archaeological values;” where appropriate, to “preserve and protect certain public lands in their natural condition; [to] provide food and habitat for fish and wildlife and domestic animals; and [to] provide for outdoor recreation . . .”).

30. KLYZA & SOUSA *supra* note 8, at 41–44; *see also* SKILLEN *supra* note 23, at 88–89.

31. PAUL J. CULHANE, PUBLIC LANDS POLITICS: INTEREST GROUP INFLUENCE ON THE FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT 2 (1981). For example, logging was blocked in the Northwest after the discovery of the endangered spotted owl, gas drilling was blocked on the Rocky Mountain Front by the USFS, and coal mining was blocked in Utah by the designation of Grand Staircase-Escalante National Monument in 1996. *See* Robert Keiter, *Breaking Faith with Nature: The Bush Administration and Public Land Policy*, 27 J. LAND RESOURCES & ENVTL. L. 195, 195–254 (2007).

32. Martin Nie, *The Underappreciated Role of Regulatory Enforcement in Natural Resource Conservation*, 41 POL’Y SCI. 139 (2008).

ties for various resources and land “systems” remained fairly fragmented. Pressure built for a shift toward policies that were more procedurally collaborative and more ecological in substance.

Traditional users of the land had long sought to shake free from the increasingly thick tangle of national regulation by devolving decision-making control to state and local governments or to the users themselves.³³ The environmental interests’ leverage in the political process had been enhanced by this web of new “green state” regulation. These environmentalists pushed for new generation (or next generation) policies that were more integrated across landscapes and more adaptive to local conditions.³⁴ On various parts of the natural and political landscapes, the “organic growth”³⁵ of collaborative arrangements between conflicting local advocates and land management agencies produced hope in some quarters that public lands policies stood at the “brink . . . of the emerging age of ecology.”³⁶

II. CATRON COUNTY, NEW MEXICO: COWS

The historical relationship between the natural and political landscapes of Catron County in western New Mexico illustrates the ecology of public lands policy. Catron is the largest county, by area, in New Mexico, consisting of almost 7,000 square miles.³⁷ The county is located in the west-central part of the state along the Arizona border and comprises mostly rugged mountain terrain, with steep slopes, narrow canyons, rocky formations, and heavy forest cover.³⁸ It is bisected north to south by the Continental Divide and east to west by the Mogollon Rim, the southern edge of the Colorado Plateau. The Mimbres, Gila, and San Francisco rivers run through it. One late-nineteenth-century resident said of the region, “[it] cannot be described by man, for at times, especially after a rainy season, with its forests, flowers, and wild animals, it is a perfect paradise.”³⁹

33. See, for example, the Sagebrush Rebellion, the Wise Use Movement, and the County Supremacy Movement.

34. David J. Sousa & Christopher McGrory Klyza, *New Directions in Environmental Policy Making: An Emerging Collaborative Regime or Reinventing Interest Group Liberalism*, 47 NAT. RESOURCES J. 377, 378–79 (2007).

35. *Id.* at 438.

36. KEITER, *supra* note 11, at 14.

37. Catron Cnty., *History of Catron County, New Mexico*, MYLOCALGOV.COM, <https://mylocalgov.com/catroncountynm/Index.asp?section=5> (last visited Jan. 9, 2011) [hereinafter *History of Catron County*].

38. *Id.*

39. JAMES A. MCKENNA, *BLACK RANGE TALES* 9 (1969).

These lands have been shaped by the political landscape, especially because more than three-quarters of Catron County has remained in government ownership, the majority managed by the USFS. In 1899, President William McKinley set aside over two-million acres as the Gila River Forest Reserve (now the Gila National Forest), and other lands in the county were later reserved as parts of the Apache and Cibola National Forests. The Gila Wilderness, the earliest of the nation's wilderness areas, and the Aldo Leopold Wilderness, are also in Catron County.

These national forests and wilderness areas were overlaid on a landscape sparsely populated by settlers engaged in mining, logging, and, especially cattle and sheep ranching. In the 1850s, Hispano families from the Rio Grande Valley migrated into this area. They began raising sheep and cattle in small communities like Aragon, Quemado, Datil, and Upper, Middle, and Lower Frisco Plazas. Prospectors in these mountains uncovered deposits of gold, silver, copper, and other minerals, and loggers found bountiful forests.⁴⁰ Mormon ranchers trickled into the mountains and basins of the Mogollon region, as did Anglo cattle ranchers, primarily from Texas.⁴¹ In 1885, the Atcheson, Topeka, and Santa Fe Railroad completed a branch line from Socorro to Magdalena, creating a railhead in the region from which livestock could be shipped. Ranchers across western New Mexico and eastern Arizona began driving cattle and sheep over the "Magdalena Stock Driveway," a 120-mile trail, five to ten miles wide, that passed Quemado, Pie Town, and Datil, with a spur out of Reserve. Hundreds of thousands of livestock passed over this trail during almost a century of use. BLM historians have written that "[t]he Magdalena Trail ranks in importance with the famous Chisum and Goodnight-Loving Trails. What sets it apart is its continued use into the 1970s."⁴²

The cattle that grazed these trails were not native to New Mexico. They came to the land initially as a result of Spanish colonial policies and politics. By the late 1800s, however, cattle had become a fixture of Catron's landscape and the backbone of its economy and culture. Writing about life as a child on a Catron County ranch in the late 1800s, resident Agnes Morley Cleaveland penned, cows were "our universe"⁴³ We

40. MARC SIMMONS, *NEW MEXICO: A BICENTENNIAL HISTORY* 155–58 (1977).

41. *Id.* at 155–61; STEWART L. UDALL, *THE FORGOTTEN FOUNDERS: RETHINKING THE HISTORY OF THE OLD WEST*, at xix–xx (2002); *History of Catron County*, *supra* note 37.

42. BUREAU OF LAND MANAGEMENT, Brochure No. BLM/NM/GI-07-01-1220, *THE MAGDALENA TRAIL: A LIVESTOCK DRIVEWAY* (undated), available at http://www.blm.gov/pgdata/etc/medialib/blm/nm/field_offices/socorro/docs.Par.19843.File.dat/Magdalena%20Trail%20Bro.pdf (last visited Jan. 9, 2011).

43. AGNES MORLEY CLEAVELAND, *NO LIFE FOR A LADY* 104 (1976).

knew our own dry cows or long yearlings or three-year-old steers or maturing heifers as city children know their schoolmates.”⁴⁴

By the turn of the twentieth century, however, cattle grazing in the region had begun to generate controversy as this exotic species impacted the land. Government “studies indentified ‘uncontrolled’ grazing as the cause of widespread range [and] watershed deterioration”⁴⁵ Efforts to reconcile the new species with the old landscape, and to control the growing conflicts among stock raisers, spilled across the political landscape. This led to new national policies that reserved public lands for multiple uses, carved out specific regions for grazing, and established exclusive grazing preferences for a fee.⁴⁶

In Catron County, cattle ranching on these vast public lands became a mainstay of the agricultural economy. Yet, while cattle production levels fluctuated over the long term in response to changing markets, weather, and government policies, those levels trended downward over the long term.⁴⁷ By the 1960s and 1970s, changes in the federal policies reshaped the natural landscape, as new protections for wilderness, endangered species, and recreational access on public lands squeezed the herds being run there.⁴⁸ Changes in land management priorities brought public lands ranchers in Catron into increased conflict with federal agencies and national environmental activists. Still, in 2010, the Catron County economy remained “very dependent” on ranching, and cattle remained a durable feature of the county’s landscape.⁴⁹

44. *Id.* at 110. See MONTAGUE STEVENS, MEET MR. GRIZZLY: A SAGA ON THE PASSING OF THE GRIZZLY (1943), and BEN W. KEMP WITH J.C. DYKES, COW DUST AND SADDLE LEATHER (1968), for colorful accounts of ranching and hunting life in western New Mexico in the late nineteenth and early twentieth centuries. Crop raising in the region was too difficult. Faith Morley Reed, who operated a lodge in Datil in the early 1900s, said: “Like my husband Les used to say, ‘You couldn’t take a barrel of whiskey and a tribe of Indians and raise hell on this land! The growing season’s too short.’” Larry Meyer, *Pie Town*, 31 AM. HERITAGE MAG., Feb.–Mar. 1980, available at http://www.americanheritage.com/articles/magazine/ah/1980/2/1980_2_74.shtml.

45. Eleanor P. Taylor, John M. Fowler & Angus P. McIntosh, *Grazing Trends in the Gila National Forest: 1906–1998*, RITF Report No. 49, at 2; CATRON CNTY., CATRON COUNTY COMPREHENSIVE LAND USE PLAN (1993), available at <http://www.catroncounty.net/cccp/1993.htm> [hereinafter CATRON COUNTY COMPREHENSIVE LAND USE PLAN].

46. Taylor Grazing Act of 1934, 43 U.S.C. §§ 315–315r (2006).

47. *Nat’l Agric. Statistics Serv.*, U.S. DEP’T OF AGRIC., <http://www.nass.usda.gov> (last visited Feb. 13, 2011).

48. See, especially, the Wilderness Act of 1964, 16 U.S.C. §§ 1131–1136 (2006), and the Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2006).

49. *Agriculture and Horticulture*, CATRON CNTY. EXTENSION OFF., <http://catronextension.nmsu.edu/agandhort.html> (last visited Jan. 9, 2011). In 2001, the BLM reported cash receipts for livestock in Catron County of about \$10 million and listed 24,000 head of cattle and calves on its farms and ranches. BUREAU OF LAND MANAGEMENT, BUREAU OF LAND

Federal policies governing cows in Catron encountered a county political landscape that was, and still is, complex and contentious. According to one writer, Catron County “has always been a hospitable place for troublemakers, [and it] has not lost its flair for Old West theatrics or its penchant for thumbing its nose at authority.”⁵⁰ Troublemaking is often in the eye of the beholder, but Catron County leaders have unabashedly resisted federal political authority, especially regarding governing the land.⁵¹

Westerners have long challenged federal ownership and control of the land and resources within their states. They have battled in the courts and the legislatures, via public protests, and in occasional violent confrontations with law enforcement officials—and Catron County is no different.⁵² The Sagebrush Rebellion of the 1970s and the Wise Use Movement that followed are only two recent manifestations of western efforts to wrest control of public lands from the national government.⁵³ In the early 1990s, Catron County sent a new wave of anti-government agitation rippling across the western political landscape, sparking the “County Supremacy Movement.” For example, its 1991 Interim Land Use Ordinance declared:

We have demanded through our elected legislature and governor that the federal government comply with the Constitution of the United States . . . which limits the authority of the federal government to specific lands, and we hereby reaffirm our demand that all lands in Catron County not so specifically designated be relinquished to the citizens thereof.

Further . . . we declare that all natural resource decisions affecting Catron County shall be guided by the principles of protecting private property rights, protecting local custom and culture, maintaining traditional economic struc-

MANAGEMENT SOCORRO FIELD OFFICE RESOURCE MANAGEMENT PLAN REVISION AND ENVIRONMENTAL IMPACT STATEMENT: BASELINE SOCIOECONOMIC CONDITIONS REPORT: SOCORRO AND CATRON COUNTIES 21 (Dec. 2003), available at http://www.blm.gov/pgdata/etc/medialib/blm/nm/field_offices/socorro/socorro_planning/socorro.Par.15139.File.dat/Final%20Baseline%20Socio%20Cond%20Rpt_12-23-03%20Clean.pdf (prepared by URS Corporation).

50. Frank Clifford, *Cow County Tells U.S. to Back Off Land Use: A Slice of the Old West Declares Joint Sovereignty and Threatens to Arrest Federal Officials*, L.A. TIMES, Apr. 4, 1994, at 3.

51. The county website celebrates a bit of its history as a haven for troublemakers. See *History of Catron County*, *supra* note 37.

52. See R. MCGREGGOR CAWLEY, *FEDERAL LAND, WESTERN ANGER: THE SAGEBRUSH REBELLION AND ENVIRONMENTAL POLITICS* (1993).

53. See MATTHEW MCKINNEY & WILLIAM HARMON, *THE WESTERN CONFLUENCE: A GUIDE TO GOVERNING NATURAL RESOURCES* 169–200 (2004).

tures through self-determination, and opening new economic opportunities through reliance on free markets.⁵⁴

Catron County officials insisted that federal enforcement of public land laws, including the ESA, respect the county's local "custom and culture," by which it meant grazing and logging at levels determined by the county.⁵⁵ According to one critic:

The Catron County Plan attempts to tell the federal and state agencies how they must run their shop and what they can and cannot do on state and federal public lands. These county provisions deliberately attempt to interfere with federal management as directed by a number of federal statutes including the Endangered Species Act.⁵⁶

Ranchers and public officials in the county, often one and the same, sought to protect the cattle industry from federal grazing fee increases being pushed by the Clinton administration and from stocking level reductions mandated after the discovery of endangered species in Catron County.⁵⁷ The decision by the U.S. Fish and Wildlife Service (FWS) in the early 1990s to reintroduce the endangered Mexican gray wolf to its historic range, including most of the county, triggered even more fierce resistance. For many in Catron, it was regarded as "the final kiss of death" for the county's economy and way of life.⁵⁸

Jim Catron, the county's attorney and a distant relative of its namesake, said of the wolf's federally imposed protection:

If those one-worlders and those federal imperialists really believe they've got us whipped, that the final resistance to centralized government is over, they're wrong. We don't use

54. CATRON COUNTY COMPREHENSIVE LAND USE PLAN, *supra* note 45, at viii (first omission in original) (quoting Catron Cnty., N.M., Interim Land Use Ordinance 004-91 (May 21, 1991), which was repealed by Catron Cnty., N.M., Ordinance No. 003-92 on October 6, 1992), available at <http://www.catroncounty.net/cccp/1993.htm>.

55. Andrea Hungerford, "Custom and Culture" Ordinances: Not a Wise Move for the Wise Use Movement, 8 TUL. ENVTL. L.J. 457 (1995).

56. Scott W. Reed, *The County Supremacy Movement: Mendacious Myth Marketing*, 30 IDAHO L. REV. 525, 546 (1994). For other criticism of the County Supremacy Movement, see Paul Conable, *Equal Footing, County Supremacy, and the Western Public Lands*, 26 ENVTL. L. 1263 (1996), and Elizabeth M. Osenbaugh & Nancy K. Stoner, *The County Supremacy Movement*, 28 URB. LAW. 497 (1996). Catron County had previously passed ordinances requiring residents to own firearms and obligating environmentalists to register with the county. KEITER, *supra* note 11, at 229.

57. J. Zane Walley, *The Wasting of Catron County*, in EL LOBO: READINGS ON THE MEXICAN GRAY WOLF (Tom Lynch ed., 2005) [hereinafter EL LOBO].

58. *Id.* at 199.

bullets and swords; now we use lawsuits and injunctions. When these people see government getting strong enough to push them off their lands, destroy their culture and their livelihoods, when these people see the federal government protecting owls and fish instead of humans, they tend to fight back.⁵⁹

Rancher and Catron County Commissioner Hugh McKeen warned, "It's going to be civil war if things don't change."⁶⁰

III. CATRON COUNTY, NEW MEXICO: WOLVES

The Mexican gray wolf was once a part of the natural landscape of western New Mexico, including what is now Catron County, with a pre-colonization population estimated to have peaked at 300 to 1,500.⁶¹ In fact, wolves have been present in the Southwest since the late Pleistocene epoch.⁶² The Mexican gray wolf, or *lobo* in Spanish, is the smallest of the five subspecies of gray wolf that once roamed New Mexico and most of North America. The *lobo* is a social animal that lives in packs, typically of four to seven, and its natural prey is large mammals like mule-deer, white-tail deer, elk, javelina, and occasionally pronghorn or bighorn sheep.⁶³ It has few natural predators; mortality in the wild is generally due to disease, malnutrition, injury, and inter-pack strife.⁶⁴ The gray wolf's historic range was the montane forests, evergreen woodlands, and adjacent grasslands in Mexico, southeast Arizona, and southwest New Mexico, where it was a key predator in the ecosystem.⁶⁵ It "co-evolved in

59. *Id.* at 198–99.

60. Vince Bielski, *Armed and Dangerous: The Wise Use Movement Meets the Militias*, 80 *SIERRA* 33 (Sept.–Oct. 1995).

61. Charles Bowden, 1992: "Lonesome Lobo", in *WAR AGAINST THE WOLF: AMERICA'S CAMPAIGN TO EXTERMINATE THE WOLF* 421, 424 (Rick McIntyre ed., 1995).

62. *THE WOLF IN THE SOUTHWEST* 13 (David E. Brown ed., 1983).

63. Ariz. Game & Fish Dep't, *Canis Lupus Baileyi* 2–3 (2001), http://www.azgfd.gov/w_c/edits/documents/Caniluba.d.pdf (unpublished abstract compiled and edited by the Heritage Data Mgmt. System); U.S. FISH & WILDLIFE SERV., U.S. DEP'T OF THE INTERIOR, *REINTRODUCTION OF THE MEXICAN WOLF WITHIN ITS HISTORIC RANGE IN THE SOUTHWESTERN UNITED STATES: FINAL ENVIRONMENTAL IMPACT STATEMENT, A-2* (Nov. 1996) [hereinafter FEIS], available at http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_EIS.pdf.

64. Ariz. Game & Fish Dep't, *supra* note 63; FEIS, *supra* note 63.

65. Ariz. Game & Fish Dep't, *supra* note 63, at 3. The historic range of the Mexican gray wolf is the subject of a scientific dispute with implications for the reintroduction program. See FEIS, *supra* note 63, at 1–3. Wolf taxonomy is also a matter of debate among biologists. See Robert K. Wayne & Carles Vilà, *Molecular Genetic Studies of Wolves*, in *WOLVES: BEHAVIOR, ECOLOGY, AND CONSERVATION* 218–38 (L. David Mech & Luigi Boitani eds., 2003).

complex interaction with [the] landscape and its peoples.”⁶⁶ According to biologists, “no other predator replaces its ecological role.”⁶⁷

The landscape changed for the Mexican gray wolf when settlers brought cattle to its range in the late 1500s. By the 1760s, Spanish missionaries in what is now New Mexico recorded wolf depredations on their cattle.⁶⁸ By the 1860s, the cattle population of the western United States had increased significantly.⁶⁹ Over the next several decades, Anglo ranchers flowed into New Mexico and the cattle population exploded, displacing native wildlife. Wolf depredations increased, creating an “acute” conflict with ranchers and initiating an “incessant warfare on the wolf.”⁷⁰ According to David Brown, in his documentation of the wolf’s eradication, “livestock were easy picking everywhere . . . [and] the adaptable wolves readily abandoned their natural prey and turned almost entirely to cattle.”⁷¹ Cattle ranchers faced many challenges beyond their control, including weather, shipping costs, and a fickle market. But wolves they could do something about. They began a systematic effort to protect cattle by targeting wolves, offering bounties for their bodies and lobbying government for relief.⁷²

After the turn of the century, the Progressive Conservation vision was brought to the task of remaking the natural landscape of New Mexico. Biologists identified wolves as a harmful predatory species that threatened livestock production. Vernon Bailey, senior biologist for the Bureau of Biological Survey, wrote that “the wolves in this region were feeding on nothing but fresh meat of their own killing. . . . Cows, steers, or calves seemed to be killed indiscriminately. . . . In the wolf droppings along the trails cattle hair was almost the only recognizable constituent.”⁷³ In 1908, O.W. Williams wrote, “If the lobo has any useful qualities or habits, I have not yet learned of them. . . . It seems to be a specialist in carnage and to have brought professional skill to the slaughter of cattle.”⁷⁴ However, Bailey was confident that, “with carefully studied methods, efficient organization, and hearty cooperation of all concerned,” predatory animals could be eliminated.⁷⁵ J. Stokely Ligon, a New Mexico game specialist, was also optimistic about the technical approach to erad-

66. Tom Lynch, *Introduction*, in *EL LOBO*, *supra* note 57, at 1.

67. FEIS, *supra* note 63, at A-2.

68. *THE WOLF IN THE SOUTHWEST*, *supra* note 62, at 14.

69. ERNEST STAPLES OSGOOD, *THE DAY OF THE CATTLEMAN* 442–50 (1929).

70. *Id.* at 19, 31.

71. *Id.* at 133. There is controversy about the actual levels of depredation.

72. BRUCE HAMPTON, *THE GREAT AMERICAN WOLF* 132–38 (1997).

73. VERNON BAILEY, *MAMMALS OF NEW MEXICO*, 304–305 (1931).

74. *THE WOLF IN THE SOUTHWEST*, *supra* note 62, at 30.

75. BAILEY, *supra* note 73, at 6.

icating this “shy pest.” “In fighting wolves, we find that we must fight them with scientific methods . . . for without a doubt the gray wolf advances in his efforts to retain his existence . . . and the hunter who brings the wily fellow to bag is a master of his trade.”⁷⁶

Efficient organization and hearty cooperation were hallmarks of the thorough wolf eradication program undertaken in western New Mexico. Bounties were paid for dead wolves, salaried hunters were deployed, traps were set, poisons like strychnine were used, and wolf dens were pulled apart. In 1907, the USFS reported that 72 wolves had been killed in the Gila and Datil forests by rangers and outside trappers.⁷⁷ By 1914, Congress explicitly authorized efforts to protect livestock by destroying wolves, and by 1917, Ligon boasted in an annual report for the Bureau of Biological Survey:

[I]t is with pleasure that I state that it is my belief that at least fifty per cent [sic] reduction in the damage done by wolves has been accomplished in New Mexico, during the last twelve months. . . . My estimate is that there are not more than 70 adult gray wolves in the State of New Mexico, at the present time⁷⁸

A year later, Ligon’s report expressed confidence that “the gray wolf will be exterminated throughout the west within reasonable time. . . . The best hunters are being constantly kept after these animals.”⁷⁹ His prediction was on target.

Tom Lynch, a university professor specializing in place-conscious literary history, has written of the wolf and this region:

For tens of thousands of years lobos trotted through these groves of Ponderosa pines, sipped water from these creeks on hot evenings, chased terrified deer across these meadows to a bloody struggle and kill, snuggled in dens among these rocks nursing a passel of pups, and echoed their harmonic howls off these canyon rocks.⁸⁰

76. J. Stokley Ligon, 1917: *Annual Report, Predatory Animal Control, New Mexico-Arizona District, U.S. Bureau of Biological Survey*, in *WAR AGAINST THE WOLF: AMERICA’S CAMPAIGN TO EXTERMINATE THE WOLF* 179, 181 (Rick McIntyre ed., 1995).

77. BAILEY, *supra* note 73, at 305.

78. Ligon, *supra* note 76, at 179, 180. The Bureau of Biological Survey, the chief federal agency responsible for the extermination of the wolf, was the forerunner of the U.S. Fish and Wildlife Service, which became the chief federal agency responsible for the wolves’ reintroduction and conservation. See *Who We Are*, U.S. FISH & WILDLIFE SERV., <http://www.fws.gov/who/> (last visited Feb. 14, 2011).

79. *THE WOLF IN THE SOUTHWEST*, *supra* note 62, at 58.

80. Lynch, *supra* note 66.

Yet by 1925, the wolf ceased to be a major predator in New Mexico (and the entire Southwest).⁸¹ Within several decades, none were left.⁸² The New Mexico landscape was transformed. The Mexican gray wolf was gone from its historic range, making the land safe for cows. According to Brown, “More than fifty years of constant effort finally destroyed the wolf. That it took so long is a fitting testimonial to his tenacity.”⁸³

IV. COWS AND WOLVES: THE LAWS

The policies that govern cows and wolves on western lands have ebbed and flowed in various directions as the political and natural landscapes have changed. These policies once opened wide spaces on the land for a flood of cattle, while squeezing hard on their native predators, like wolves. Later, federal control of cattle occupancy tightened to make room for wild lands, or to protect drought-parched hillsides, or to recover hoof-battered stream banks. More recently, policies have brought wolves back to land that long ago became part of New Mexico’s cattle kingdom. The evolution of these policies reflects the ecological relationship of the natural and political landscapes.

In the several decades after the Civil War, beef demand boomed, the cattle industry thrived, and the western landscape was transformed into rangeland. Millions of new cattle grazed hundreds of millions of acres of public land from Texas to Canada. Fairly quickly, stock owners clashed over water access and grazing rights, and homesteaders clashed with stock drivers over private property and fences. Overstocking of public lands led to overgrazing and denuding of the land, and politicians struggled to keep up with the changes happening on the ground.⁸⁴ Conflicting interests and values converged on state governments, pushing to protect the range from overgrazing; the forests from overcutting; cattle from coyotes, wolves, and ticks; “nesters” from trail herds; and businessmen from each other. From these changes and interactions in the natural and political landscapes, a patchwork of laws and regulations evolved.⁸⁵

In 1890, the Supreme Court confirmed an open range grazing policy, citing “the custom of nearly a hundred years,” and arguing that the government of the United States, “in all its branches,” not only consented

81. THE WOLF IN THE SOUTHWEST, *supra* note 62, at 71.

82. *Id.*

83. *Id.* at 175.

84. For a classic account of the history of the cattle ranching industry, see OSGOOD, *supra* note 69.

85. See DEBRA L. DONAHUE, THE WESTERN RANGE REVISITED: REMOVING LIVESTOCK FROM PUBLIC LANDS TO CONSERVE NATIVE BIODIVERSITY (1999).

to open grazing on the public lands but directly encouraged it.⁸⁶ Soon thereafter, in response to conservationists, stock owners, and recreation advocates, among others, Congress moved to close-off or control grazing on some public lands. In 1891, Congress authorized the president to designate forested areas as reserves, protected from uncontrolled use in order to preserve timber resources.⁸⁷ Presidents quickly exercised that authority, including President McKinley, who designated the Gila River Forest Reserve in west-central New Mexico.⁸⁸ Congress provided little guidance or support for management of these reserves, however, and, in 1894, the Department of the Interior (DOI) issued controversial regulations severely limiting grazing.⁸⁹ These regulations were not easily enforced, as many westerners regarded anti-grazing and conservationist efforts to be part of an eastern elite agenda enforced on the West, and as a result they resisted them.⁹⁰

Early in the twentieth century, the DOI issued new regulations that created a system of permits allowing exclusive grazing on designated allotments and specifying the number of cattle to be grazed, with permit preferences given to local ranch owners or prior users.⁹¹ These regulations required livestock owners to pay fees for grazing in the national forests but also authorized federal spending to improve range resources. Livestock associations were assured that the federal government recognized the value of the forests' forage resources and the importance of livestock grazing and that ranchers would retain access to forest resources and play a role in devising future forest grazing regulations. Congress reiterated its support for settlement and grazing in national forests, passing the Forest Homestead Act in 1906, and subsidizing predator control, including wolf eradication, in 1914.⁹²

These national forest grazing policies established the pattern for policies later adopted for the rest of the public domain under the Taylor

86. *Buford v. Houtz*, 133 U.S. 320, 326 (1890).

87. Forest Reserve Act of 1891, ch. 561, 26 Stat. 1095 (1891).

88. See ROBERT D. BAKER, ROBERT S. MAXWELL, VICTOR H. TREAT, & HENRY C. DETHLOFF, *TIMELESS HERITAGE: A HISTORY OF THE FOREST SERVICE IN THE SOUTHWEST* 33 (1988) available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_021028.pdf.

89. ROWLEY, *supra* note 22, at 21–24.

90. *Id.* at 28.

91. *Id.* at 46–47. Under the regulations, 140 permits were issued to graze 45,679 cattle on allotments in the Gila National Forest. *Id.* at 50.

92. Act of June 11, 1906, ch. 3074, 34 Stat. 233, (repealed by Pub. L. No. 87-869 § 4, 76 Stat. 1157). See also ROBERT NOECKER, CONG. RESEARCH SERV., ENR 97-747, *REINTRODUCTION OF WOLVES* (1997), available at <http://ncseonline.org/NLE/CRSreports/Biodiversity/bio dv-13.cfm?&CFID=6622718&CFTOKEN>.

Grazing Act of 1934 (TGA).⁹³ The TGA sought to balance conflicting demands on the public land. It authorized the DOI to make rules to protect the land from “destruction or unnecessary injury,” while simultaneously stabilizing the livestock industry by safeguarding grazing privileges.⁹⁴ These policies developed in a political landscape in which confidence in, and support for, national regulatory management of industry had increased, and deterioration of national forest and range resources had generated political alarm. This landscape was also marked by the political strength of the ranching industry and its lobbyists, as was reflected in their “capture” of the grazing policymaking process.⁹⁵

These grazing policies were reiterated for national forests by Congress in 1960 with the passage of the Multiple-Use Sustained-Yield Act, and later for BLM lands with FLPMA.⁹⁶ These laws mandated management of public lands for multiple use, with cattle grazing given explicit protection.⁹⁷ However, these reiterated policies were more nuanced than those of previous decades, reflecting changing political forces in national politics. Land management agencies were now also instructed to protect air quality, food, and habitat for fish and wildlife, and, in some cases, to preserve lands in their natural conditions.⁹⁸

Preservationist political forces gained strength in the decades after World War II and began reshaping the political and natural landscapes, succeeding in protecting large swaths of pristine land as wilderness and forcing much more systematic assessment of the environmental implications of public land uses.⁹⁹ NEPA reconfigured the political landscape by shifting leverage to interests seeking to reduce traditional consumptive uses of public lands, like mining, logging, and grazing. NEPA requires all federal agencies engaged in actions that significantly affect the envi-

93. Taylor Grazing Act of 1934, 43 U.S.C. §§ 315–315r (2006).

94. *Id.*

95. Debra L. Donahue, *Western Grazing: The Capture of Grass, Ground, and Government*, 35 ENVTL. L. 721, 737 (2005).

96. Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528–531 (2006); Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701–1782 (2006). The National Forest Management Act of 1976, 16 U.S.C. §§ 1600–1614 (2006) imposed planning requirements on forest managers.

97. In 2008, over 6,000 permits were issued to graze almost 1.3 million cattle on National Forest lands in the United States. U.S. DEP’T OF AGRIC., *GRAZING STATISTICAL SUMMARY 4* (2008), available at http://www.fs.fed.us/rangelands/ftp/docs/grazing_stat_summary_2008.pdf. In New Mexico, 790 permittees grazed 93,500 cattle on National Forest lands. *Id.* at 74.

98. Federal Land Policy and Management Act, 43 U.S.C. § 1701(a)(8).

99. For example, Wilderness Act, 16 U.S.C. §§ 1131–1136 (2006), National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347 (2006), and Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2006).

ronment to prepare a detailed Environmental Impact Statement (EIS) that takes a “hard look” at the environmental consequences of agency decisions and actions.¹⁰⁰ It expands public input into the regulatory process and facilitates legal challenges to agency decisions that fail to adequately assess adverse environmental impacts, making it easier for agency actions to be enjoined by the courts. Environmental groups have taken advantage of NEPA provisions, challenging federal actions on a wide range of issues, including public lands grazing.

The ESA restructured public lands conflicts in favor of preservationist forces. According to law professors and authors Glicksman and Coggins, the ESA is “the most absolute of the federal statutes designed to protect public natural resources and probably the most stringent wildlife law in the world.”¹⁰¹ Federal courts have insisted that, through the ESA, “Congress intended to halt and reverse the trend toward species extinction—whatever the cost.”¹⁰² The ESA requires FWS to “list” endangered or threatened species on the basis of scientific data without considering economic costs and to designate as “critical habitat” those areas that are essential to the conservation of the species.¹⁰³ The law prohibits the “taking” of a listed species, making it unlawful to “harass, harm, pursue, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.”¹⁰⁴ Section 7 of the ESA requires federal agencies to consult with FWS to ensure that the agency’s actions will not jeopardize the continued existence of listed species or modify its critical habitat.¹⁰⁵ FWS *must* issue a biological opinion regarding the jeopardy posed to listed species by proposed agency actions and may suggest alternative courses of action or prohibit the agency from proceeding.¹⁰⁶ FWS is also directed to develop and implement “recovery plans” that may include the reintroduction of a listed species to its historic range.¹⁰⁷ In response to local resistance to reintroduction efforts, in 1982, Congress authorized the designation of some listed species populations as “experimental,” creating

100. National Environmental Policy Act of 1969 § 102(2)(C), 42 U.S.C. § 4332.

101. GLICKSMAN & COGGINS, *supra* note 12, at 272.

102. Tennessee Valley Auth. v. Hill, 437 U.S. 153, 154 (1978).

103. Endangered Species Act, 16 U.S.C. § 1536. The National Marine Fisheries Service is responsible for listing and regulating marine wildlife. As of March 2008, the FWS had listed 1,351 species in the United States as endangered or threatened. A species is listed as endangered if it is in danger of extinction throughout all or a significant portion of its range. See *ESA Basics*, U.S. FISH & WILDLIFE SERV., http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf. A species is “threatened” if it is likely to become endangered within the foreseeable future. *Id.*

104. 16 U.S.C. §§ 1538(a), 1532(19).

105. *Id.* at § 1536.

106. *Id.*

107. *Id.* at § 1533(f).

much more flexibility for FWS in its approach to recovering these species.¹⁰⁸ The ESA has complicated the grazing management tasks of the FWS and BLM.¹⁰⁹

In 1976, FWS listed the Mexican gray wolf as endangered.¹¹⁰ This reflected a significant change in the political landscape—from a Conservation era view of the wolf as pest to an ecological view of the wolf as a key species in the ecosystem. In 1982, the Mexican Wolf Recovery Plan (MWRP) was adopted by FWS and by the Mexican Dirección General de la Fauna Silvestre, with the goal “to conserve and ensure survival of the subspecies by maintaining a captive breeding program and re-establishing a viable, self-sustaining population” of wolves within their historic range.¹¹¹ The Catron County Commission, the New Mexico Cattle Growers Association, and the New Mexico Department of Game and Fish were among those who expressed opposition to the recovery plan, insisting that the reintroduction of wolves posed a threat to the ranching industry.¹¹² FWS prepared a draft EIS (DEIS) for the recovery plan and, in response to 18,000 comments from critics and advocates received during the public comment period, issued a revised final EIS (FEIS) and a decision to begin releasing captive-bred Mexican wolves into the Blue Range Wolf Recovery Area (BRWRA). This area includes most of the Gila National Forest in Catron County, which prompted a fierce conflict between opposing political forces.¹¹³ At the time, the Forest Management Plan for the Gila reflected the multiple use mandate: “The range goals of the Gila NF Plan are to provide forage to livestock, cooperate with other agencies and landowners to reduce impacts of grazing, and to manage for threatened and endangered species.”¹¹⁴

108. *Id.* at § 1539(j) (experimental populations provision). See Dale Goble, *Reintroducing the Missing Parts: The Experimental Population Provisions of the Endangered Species Act*, in EL LOBO, *supra* note 57, at 130–37 (discussing the implications of the experimental, nonessential population provisions of the ESA).

109. See Harold S. Shepherd, *The Future of Livestock Grazing and the Endangered Species Act*, 21 J. ENVTL. L. & LITIG. 383 (2006).

110. Endangered and Threatened Wildlife and Plants; Determination that Two Species of Butterflies Are Threatened Species and Two Species of Mammals Are Endangered Species, 41 Fed. Reg. 17,736 (Apr. 28, 1976) (to be codified at 50 C.F.R. pt. 17).

111. Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico, 63 Fed. Reg. 1752, 1753 (Jan. 12, 1998) [hereinafter Experimental Population] (to be codified at 50 C.F.R. pt. 17).

112. FEIS, *supra* note 63, at 5-44, 5-68.

113. Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico, 61 Fed. Reg. 19237 (May 1, 1996) (to be codified at 50 C.F.R. pt. 17). About two-thirds of Catron County is in the BRWRA. FEIS, *supra* note 63, at 3–10.

114. FEIS, *supra* note 63, at 3–10.

The laws that govern cattle in western New Mexico support live-stock grazing on the public lands.¹¹⁵ Yet these laws also require that endangered species, like the Mexican gray wolf, be afforded strong federal protection. No specific course of action regarding wolves or cows on public lands is prescribed, and land management agencies have considerable discretion over specific policies. This inherent conflict is ripe for on-the-ground policy to be shaped by the showdown and interaction of competing pressures flowing across the landscape. Local areas, like Catron County, are thrust into the confluence in which competing forces converge, carving out the local political and natural landscapes and re-making both—continuously, in an ecological process.

V. THE SHOWDOWN

The actual form and effect of the MWRP would be contingent on the natural landscape and ecology of the Southwest. But could a suitable natural habitat still support a viable Mexican wolf population? The ecological resources on its historic range, including available water and prey, had undergone significant change over many decades. Scientists were also concerned that prolonged captivity had led to genetic, physical, and behavioral changes in Mexican wolves that could diminish their prospects for recovery.¹¹⁶ The reintroduction of wolves, however, would change the natural landscape once again.

The form and effect of wolf policies would also be dependent on the political landscape and the ecology. It was clear from the beginning that the contours of the MWRP would be shaped by stiff resistance from federal, state, and local officials, as well as from local residents and organized interest groups in New Mexico (and Arizona).¹¹⁷ Catron County Commissioner Ed Wehrheim said: “The feds have had their way in a lot of places. But they know when they come to Catron County that they’re going to get a fight.”¹¹⁸ Because of this resistance, as well as budget, technical, and political considerations, FWS was less than enthusiastic about

115. The USFS website currently states: “The Forest Service supports livestock grazing on National Forest System lands.” *Why Does the Forest Service Permit Livestock Grazing on NFS Lands?*, U.S. FOREST SERV., <http://www.fs.fed.us/rangelands/uses/allowgrazing.shtml> (last updated Dec. 5, 2005).

116. Experimental Population, *supra* note 111, at 1755.

117. Opposition had been expressed by former New Mexico Governor Gary Johnson, the New Mexico Game and Fish Department, Representative Joe Skeen (whose district included Catron County), New Mexico Senator Pete Domenici, and Arizona elected officials as well. See FEIS, *supra* note 63, at app. 5 (letters of opposition).

118. Mike Cade, *Land in Crisis: Wolves at the Door in Catron County, New Mexico*, RANGE, Summer 2007, at 46, 54 (section entitled “Fighting Back”), available at <http://www.range-magazine.com/specialreports/07-su-land-in-crisis.pdf>. Catron was already battling FWS

moving aggressively to implement the wolf-reintroduction program.¹¹⁹ Cooperation from New Mexico and Arizona in identifying suitable landscapes for reintroduction was also less than forthcoming.¹²⁰ FWS's initial embrace of the White Sands Missile Range in New Mexico as a reintroduction site, despite its questionable suitability, was an indication of its efforts to finesse the political environment in which it was operating.¹²¹ A "taxonomic revision" through which FWS combined the Mexican gray wolf (*Canus lupus baileyi*) with other apparently extinct wolf species (*Canus lupus monstrabilis* and *Canus lupus mogollonensis*) finessed the natural environment by extending the lobo's official range 200 miles northward, giving FWS greater flexibility in choosing reintroduction sites.¹²²

It was also clear that environmental activists would push hard against the resistance, using all available paths to get wolves back onto the land. In 1990, in response to perceived foot-dragging, a coalition of environmental groups sued FWS alleging ESA violations for failure to take the necessary actions to conserve a listed species.¹²³ The suit sought to force the secretary of the Interior "to implement those provisions of the Mexican Wolf Recovery Plan which call for the Mexican Wolf to be reintroduced into the wild"¹²⁴ FWS resisted environmentalist pressure in court, moving to dismiss the suit and noting that the agency must move slowly and "carefully plan the [wolf] release process" in order to be successful.¹²⁵ FWS was also prodded to hire a wolf recovery coordinator and to issue a proposal to implement the MWRP by beginning the NEPA environmental assessment process with public scoping meetings.¹²⁶ By 1993, continuing to negotiate the rugged political terrain, FWS

over its designation of critical habitat for the loach minnow, an endangered fish present in the county. *See id.* at 46, 46–54.

119. ROBINSON, *supra* note 10, at 350.

120. *See* Sharon E. Riley, *The Wolf at the Door: Competing Land Use Values on Military Installations*, 153 MIL. L. REV. 95 (1996). Tribes in both states also resisted evaluation of their lands, and the Department of Defense sent very mixed signals about evaluation of the White Sands Missile Range as suitable wolf habitat. *See id.*; FEIS, *supra* note 63, at 5-48 to 5-49 (letters from the Mescalero Apache Tribe and the San Carlos Apache Tribe).

121. Riley, *supra* note 120, at 154–57. Use of White Sands Missile Range might minimize opposition to reintroduction elsewhere in New Mexico.

122. ROBINSON, *supra* note 10, at 351.

123. Riley, *supra* note 120, at 157.

124. *Id.* at 158 n.408 (quoting the complaint initiating action in *Wolf Action Group v. United States*, No. CIV 90-0390HB (D.N.M. Apr. 23, 1990) (stipulated dismissal May 21, 1993)).

125. Riley, *supra* note 120, at 158 (quoting Defendants' Memorandum of Law in Support of Motion to Dismiss, or, in the Alternative, for Summary Judgment, *Wolf Action Group v. United States*, No. CIV 90-0390HB (D.N.M. June 29, 1990)).

126. FEIS, *supra* note 63, at 1-1, 1-7.

reached a Stipulated Settlement with Wolf Action Group in which it agreed to implement the MWRP.¹²⁷ It released a DEIS by 1995, a proposed rule and FEIS by 1996, and a Final Rule, as well as the first wolf releases in 1998.¹²⁸

Officials in both Arizona and New Mexico still opposed any release of wolves in their states; Catron County went as far as passing an ordinance prohibiting the release of wolves in the county.¹²⁹ FWS planners sought to ease resistance through local meetings with stakeholders. In a 1994 meeting with Catron County ranchers and anti-wolf activists, FWS staffers were warned that “someone is going to get shot over this.”¹³⁰ Around the same time, a federal wildlife biologist, after a meeting to outline how protections for endangered species might lead to grazing reductions on public lands, reported a confrontation with a local rancher who threatened: “If you ever come down to Catron again, we’ll blow your fucking head off.”¹³¹ Over the next decade, the intensity on all sides spilled over into raucous public meetings and protests and occasional physical confrontations and fistfights.¹³² Internal e-mails among FWS employees sometimes expressed concerns about security.¹³³

Despite all this, FWS still sought cooperation and collaboration with local officials and interests. Its Final Rule on wolf reintroduction insisted that FWS was “exploring additional avenues of communication and cooperation with local governments and stakeholders in the implementation” of the MWRP.¹³⁴ The Final Rule also committed FWS to the use of “adaptive management principles”—an ecological approach of trial, error, and adjustment, or learning by doing—that would involve interagency cooperation, public participation, and regular progress reviews and reports, and would seek to adapt policies to the local political

127. Riley, *supra* note 120, at 159 n.422 (stipulated dismissal May 21, 1993).

128. *Mexican Wolf Recovery Program Chronology*, U.S. FISH & WILDLIFE SERV., <http://www.fws.gov/southwest/es/mexicanwolf/chronology.shtml> (last updated Feb. 8, 2006).

129. Catron Cnty., N.M., Ordinance 002-92 (1992). Other counties passed similar ordinances.

130. ROBINSON, *supra* note 10, at 355.

131. Charles McCoy, *Cattle Prod: Catron County, N.M., Leads a Nasty Revolt Over Eco-Protection*, WALL ST. J., Jan. 3, 1995, at 1.

132. John Dougherty, *Pack Mentality: The Fur Flies as Ranchers and Wolf-Huggers Argue over a Plan to Put Lobos in the Wilderness*, PHOENIX NEW TIMES, Mar. 9, 2000, <http://www.phoenixnewtimes.com/2000-03-09/news/pack-mentality>.

133. See, e.g., e-mail from Wendy Brown, Endangered Species Recovery Biologist, U.S. Fish & Wildlife Serv. to DOI Law Enforcement (Mar. 8, 2000, 10:04 MST) (on file with author).

134. Experimental Population, *supra* note 111, at 1753.

and natural landscapes.¹³⁵ To implement the Final Rule, an Interagency Management Advisory Group was created, which included representatives from officially designated cooperating parties, including Catron County.¹³⁶

In 1998, in a move to reduce opposition, FWS proposed to reintroduce the Mexican wolf as an “experimental, nonessential” population under Section 10(j) of the ESA, arguing that: “Management flexibility is needed to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting. It is also critical to obtaining needed State, Tribal, local, and private cooperation” and to allow FWS to mitigate negative impacts of reintroduction, “such as livestock depredation.”¹³⁷ This designation of reintroduced wolves allowed livestock owners to harass wolves on public lands or kill wolves on private lands when in the act of attacking livestock. “Problem” wolves that prey on livestock can be relocated, removed from the wild, or killed by FWS.¹³⁸ Critics argued that the experimental population designation coddled the economic interests of livestock owners. According to law professor Dale Goble, “[a]lthough some inconvenience may remain, the legendary restrictions of the mythic ESA are absent.”¹³⁹

In another effort to accommodate resistance, FWS proposed to restrict the release of wolves to a small portion of the BRWRA, designated as the “Primary Recovery Zone,” consisting of the Apache National Forest in Arizona along the border with New Mexico. No wolves would be released into the high-quality wolf habitat of New Mexico, although a “Secondary Recovery Zone” was identified in the Gila National Forest in Catron County where released wolves would be allowed to disperse. A larger “Mexican Wolf Experimental Wolf Population Area” surrounding the BRWRA and covering most of southern Arizona and New Mexico was also identified. This offered FWS even more flexibility to recapture and relocate wolves that dispersed beyond the restricted recovery zones.¹⁴⁰

135. *Id.* at 1754. Adaptive management is part of a broader move toward “ecosystem management” of lands that recognizes that ecosystems cross administrative boundaries and usually involve public and private lands, are dynamic and complex, and that our knowledge about them is often uncertain. Land management, then, needs to be experimental, sensitive to feedback, and collaborative across responsible agencies and jurisdictions. See JOHN LOOMIS, INTEGRATED PUBLIC LANDS MANAGEMENT (2d ed. 2002).

136. U.S. FISH & WILDLIFE SERV., 1998 MEXICAN WOLF INTERAGENCY MANAGEMENT PLAN 4 (Mar. 1998).

137. Experimental Population, *supra* note 111, at 1754–55.

138. *Id.* at 1764.

139. Goble, *supra* note 108, at 135.

140. Experimental Population, *supra* note 111, at 1754. The Final Rule also required FWS to prepare detailed annual progress reports and full evaluations after three and five years

Nevertheless, the Catron County Commission and other opponents moved to slow the MWRP. The county had previously requested that FWS complete a “takings implications analysis” that it claimed was required by Presidential Executive Order 12,630, arguing that reintroduced wolves will kill cattle and may reduce the value of private property in the county, obligating the government to compensate property owners.¹⁴¹ Catron also had adopted a Comprehensive Land Use and Policy Plan to respond to “the compulsory, government-imposed land use plans illegally imposed without county government input.”¹⁴² The plan insisted that federal laws require that the custom and culture of counties be protected from federal actions and that counties have a significant legal role in decisions regarding federal lands. Counties, according to the Catron plan, “are political sovereigns that have dual or concurrent authority to plan and regulate on federal lands.”¹⁴³ Catron County insisted that the wolf recovery plan was both illegal and inconsistent with its land use policies.¹⁴⁴ FWS responded that the dispersal of wolves into Catron “does appear to conflict” with the goals of the county’s land use planning ordinances, but “Federal authority would pre-empt any conflicting local ordinances.”¹⁴⁵

In response to the Final Rule proposing release of captive-bred wolves, issued 21 months behind schedule, Catron County livestock owners joined with the New Mexico Cattle Growers Association in a lawsuit seeking to permanently block the wolf release.¹⁴⁶ In *New Mexico Cattle Growers Association v. U.S. Fish and Wildlife Service*, the plaintiffs, including the Catron County Livestock Bureau, argued that FWS failed to: (1) comply with NEPA and the ESA by issuing an FEIS that grossly underestimated the amount of cattle likely to be lost to wolf depredation; (2) consider whether the captive-bred Mexican wolves were in fact “wolf-dog” hybrids; (3) weigh the extent to which the wolf release would

that recommend continuation, modification, or termination of the reintroduction effort. *Id.* at 1771.

141. Under the Reagan-era Executive Order, “executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications” Exec. Order No. 12,630, 3 C.F.R. 554 (1988).

142. Catron Cnty., N.M. Comprehensive Plan ix (1993).

143. *Id.* at 1–5.

144. See, e.g., FEIS, *supra* note 63, at 5-68 to 5-72 (letter from the Catron County Commission to the FWS).

145. Experimental Population, *supra* note 111, at 1755.

146. N.M. Cattle Growers Ass’n v. U.S. Fish & Wildlife Serv., CIV No. 98-367M/JHG, 1999 U.S. Dist. LEXIS 19096 (D.N.M. Oct. 28, 1999).

jeopardize other endangered or threatened species; and (4) adequately consult with the public or interested parties.¹⁴⁷

In its ruling, the court rejected each of these contentions.¹⁴⁸ The court held that while these statutes prescribe certain decision-making procedures, they mandate no substantive outcomes to the FWS decision-making process, and that the court could not substitute its judgment for that of the agency on substantive issues.¹⁴⁹ In a lengthy ruling, the court found that FWS had “acted reasonably and objectively,” prepared an FEIS that was “sufficiently complete and reasonable,” and made decisions that were “supported by substantial evidence.”¹⁵⁰ According to the court, “[R]egardless of how strenuously an action is opposed, or how justified its opposition, the final administrative decision cannot violate NEPA unless the agency action is essentially uninformed.”¹⁵¹ In this case, FWS was on solid ground.

In the meantime, in response to opponents’ insistence that livestock owners be compensated for losses attributable to wolves, the non-profit activist group Defenders of Wildlife established a \$100,000 fund to compensate livestock owners for losses due to wolf depredation, modeled after similar programs for wolf reintroductions in other regions.¹⁵² These compensation programs—in which a private group raises money to cover private losses in order to lessen opposition to public policies—are an example of an emerging innovative and collaborative policy process. Still, critics complained that, in disputes over the cause of cattle deaths, Defenders of Wildlife erred on the side of denying compensation. Some also were skeptical that a private compensation program could get the government off the hook for its “taking” of private property: “[T]he notion that a livestock owner whose property has been taken by government action must accept private compensation in lieu of seeking compensation from the sovereign is, at best, a dubious proposition.”¹⁵³ Furthermore, in response to the implication that the compensation program might even make wolf depredation profitable for ranchers, Alex Thal, a Catron County rancher, argued that running cattle to accommodate wolves would seriously disrupt ranch operations. “Peo-

147. *Id.*

148. *Id.* at 5.

149. *Id.* at 4, 37–38.

150. *Id.* at 66, 70, 74.

151. *Id.* at 55. An appeal by the plaintiffs was dismissed by the Tenth Circuit.

152. See *Background on Defenders of Wildlife Wolf Compensation Trust*, DEFENDERS OF WILDLIFE, http://www.defenders.org/programs_and_policy/wildlife_conservation/solutions/wolf_compensation_trust/background.php (last visited Jan. 10, 2011).

153. Joel M. Carson, *Reintroducing the Mexican Wolf: Will the Public Share the Costs, or Will the Burden Be Borne by the Few?*, 38 NAT. RESOURCES J. 297, 305 n.42 (1998).

ple raise cattle to feed people, not wolves,” said Thal.¹⁵⁴ On the other hand, Alan Thackman, also a Catron County rancher, said the compensation program would help: “I know some people won’t agree with me, but I’ll raise cows to feed wolves. I’m doing it anyway.”¹⁵⁵

In the spring of 1998, 11 captive-bred wolves were released into the Primary Recovery Zone with the support of Secretary of the Interior Bruce Babbitt and the Clinton administration.¹⁵⁶ In other parts of the political landscape, the story was different. Catron County’s representative in the U.S. House of Representatives, Joe Skeen (R), a public lands sheep rancher, was adamantly opposed to wolf reintroduction. So were New Mexico’s Republican Senator Pete Domenici and Governor Gary Johnson (R).¹⁵⁷ Arizona’s governor and members of its congressional delegation also opposed the release.¹⁵⁸

The released wolves quickly adapted to the landscape, feeding on wild game, avoiding livestock, gaining weight, and reproducing.¹⁵⁹ Just as quickly, the first wolf released was shot to death. The shooter claimed to have acted in self-defense although FWS investigators reported the wolf had been shot broadside while standing still.¹⁶⁰ After lengthy interrogation, FWS refused to prosecute in what some observers described as an effort to “bank some good will” among wolf opponents.¹⁶¹ A local editorial denounced the “despicable behavior” of “the region’s disgruntled, lawless primitives,” as five more wolves were shot, including the first wild-born Mexican wolf pup in more than 50 years.¹⁶² Wolf opponents defended one of the shooters: “He’s a retired postman, he’s not Paul Bunyan, he’s not Roy Rogers, he’s not Rambo. He’s a very meek,

154. Mary Alice Murphy, *Officials, Catron Residents Discuss Wolf Program*, N.M. FED. LANDS COUNCIL (Jan. 25, 2009, 12:37 AM), http://nmflc.blogspot.com/2009_01_01_archive.html.

155. *Id.*

156. U.S. Fish & Wildlife Serv., *Mexican Wolf Returns to the Wild*, ENDANGERED SPECIES BULL., Mar. 1998, at 12. Opinions across the relevant federal agencies were mixed. See FEIS, *supra* note 63, at 5–11 (official government comments).

157. *Id.* at 5–46. The political earthquake of the mid-1990s that gave Republicans control of both houses of Congress made Skeen chair of the House Appropriations Subcommittee on Agriculture and Domenici chair of the Senate Committee on Energy and Natural Resources.

158. *Id.* at 5–39.

159. Peter Aleshire, *Wolf Killers Sought in Southwest*, HIGH COUNTRY NEWS, Dec. 21, 1998, available at <http://www.hcn.org/issues/145/4687>.

160. Greg Hanscom, *Bounty on Wolf Killers*, HIGH COUNTRY NEWS, Nov. 23, 1998, available at <http://www.hcn.org/issues/143/4623>.

161. Fitzgerald, *supra* note 10, at 35.

162. Editorial, *Hunt Down Wolf Killers*, ARIZ. DAILY STAR, Nov. 12, 1998, <http://www.biologicaldiversity.org/publications/earthonline/endangered-earth-online-no161.html>. See also ROBINSON, *supra* note 10, at 356.

mild retired postman, and the U.S. Fish and Wildlife Service did everything they could to convict, to indict, this honest man who defended his family from a wolf."¹⁶³ Arizona had previously debated a bill that would have imposed a \$500 bounty on any wolf reintroduced by federal agencies.¹⁶⁴ Now, FWS offered a \$45,000 reward for the wolf killers.¹⁶⁵

FWS recaptured the remaining animals and re-released them later in the year, first splashing them with fluorescent paint so they would not be "mistaken" for coyotes by hunters.¹⁶⁶ Dozens more wolves were eventually released into the Primary Recovery Zone, and illegal shootings continued at a higher than anticipated rate.

In 1999, David Parsons, FWS's Mexican wolf recovery leader, recommended policy changes to allow the "translocation" of problem wolves and the direct release of captive wolves into the Gila Wilderness in Catron County. Parsons argued that translocation and direct release into "the best and safest habitats" in New Mexico "not only makes good sense for wolf recovery, it likely would be more cost effective as well."¹⁶⁷ In response, the Catron County Commission passed a resolution condemning the relocation of wolves into Catron County, claiming that it would present "unacceptable threats to the safety of the inhabitants" and would not be "in the best interest of the people and lands" of Catron.¹⁶⁸ Under pressure from local officials and rancher groups, FWS balked at Parsons' recommendation. Counter-pressure from environmental groups and several members of Congress brought approval for moving forward with translocation. Parsons, however, had taken a routine retirement with the expectation that he would be rehired on a contract basis. He was not rehired, however, in what critics called an "administrative sleight of hand" aimed at ridding the agency of its "troublesome recovery coordinator."¹⁶⁹ It is clear that there was internal debate at FWS about

163. Jay Zane Walley, Comments at Public Hearing to Receive Comments on the Proposed Translocation of Previously Released Mexican Gray Wolves Throughout the BWRA in Arizona and New Mexico 53 (Mar. 1, 2000) (transcribed by Cumbre Court Reporting, Santa Fe, N.M., and on file with author).

164. *Republicans in West Challenge Federal Handling of Resources*, AM. COWBOY, May/June 1995, at 18.

165. Aleshire, *supra* note 159.

166. *Id.* Of course, wolves splashed with fluorescent paint would also be more visible to those who might shoot them.

167. Memorandum from David Parsons, Mexican Wolf Recovery Leader, U.S. Fish & Wildlife Serv., to Nancy Kaufman, Reg'l Dir., U.S. Fish & Wildlife Serv. (Sept. 13, 1999) (on file with author).

168. Catron Cnty., N.M., Res. 011-2000 (Dec. 20, 1999). The resolution recommended that problem wolves be dealt with in Arizona and not be transferred to New Mexico. Several other New Mexico counties passed similar resolutions.

169. ROBINSON, *supra* note 10, at 357.

the biological and political issues surrounding translocation and direct release into New Mexico.

In 2000, FWS invited public comment as it prepared an environmental assessment (EA) for the translocation of wolves to four sites in the Gila Wilderness in order to reduce conflicts with livestock. Catron County responded that the proposal was inconsistent with various executive orders, threatened the “health, safety, and welfare of Catron County residents, and required the preparation of an entirely new EIS.”¹⁷⁰ Various New Mexico livestock associations and county governments also objected, as did the New Mexico Department of Game and Fish, as well as other New Mexico officials, including Representative Skeen. FWS decided to proceed with translocation over these objections, because it would “benefit wolves and human activities by limiting conflicts with people and livestock,” avoid wolf losses, and aid in the dispersal of wolves into suitable habitat in the BRWRA.¹⁷¹ In March of 2000, two wolf packs, each with pregnant females, were released into Catron County.

Catron County reiterated its opposition to translocation and demanded to be involved in “all planning, release, and management aspects for the purpose of mitigating the detrimental effects of this program on our citizens.”¹⁷² The county further insisted that the federal government compensate the county, as well as individual ranchers, hunters, hikers, and campers for losses due to wolf releases; allow private citizens to kill wolves in the act of attacking domestic animals; and allow ranchers to approve wolf release sites.¹⁷³ The Catron County Commission adopted an ordinance that would impose “a fine of \$300 or imprisonment of 90 days or both” for any person who released a wolf within the boundaries of Catron County.¹⁷⁴

As translocation continued in 2003, Catron County joined other New Mexico and Arizona counties in a suit to block translocation of Mexican wolves and to stop the further implementation of the MWRP.¹⁷⁵ Plaintiffs alleged that translocation violated NEPA and the ESA, arguing

170. Letter from Adam Polley, Manager, Catron Cnty., to Mexican Wolf Recovery Coordinator (Feb. 1, 2000) (on file with author).

171. MEXICAN WOLF RECOVERY PROGRAM, U.S. FISH & WILDLIFE SERV., ENVIRONMENTAL ASSESSMENT FOR THE TRANSLOCATION OF MEXICAN WOLVES THROUGHOUT THE BLUE RANGE WOLF RECOVERY AREA IN ARIZONA AND NEW MEXICO 2 (2000).

172. Letter from Carl Livingston, Chairman, Catron Cnty. Comm’n, to Brian Kelly, Coordinator, Mexican Wolf Recovery (May 17, 2002) (on file with author).

173. *Id.*

174. Catron Cnty., N.M., Ordinance 002-2002 (May 17, 2002).

175. Coal. of Ariz./N.M. Cntys. for Stable Economic Growth v. U.S. Fish & Wildlife Serv., No. CIV 03-508 MCA/LCS (D.N.M. July 6, 2004).

that a Supplemental EIS (SEIS) should be prepared because the FEIS had not analyzed the direct release of “translocated” wolves into the Secondary Recovery Zone in New Mexico but only *dispersal* of wolves into the zone. Plaintiffs further claimed that translocation would concentrate “problem” wolves in the Secondary Zone, increasing wolf depredations of livestock.¹⁷⁶ Plaintiffs also argued that a SEIS was required because depredation levels had been underestimated and that hybrid wolves had been discovered in the BRWRA. They sought to stop any more wolf releases, claiming they would irreparably harm plaintiffs’ social and economic interests.

The court held that FWS’s decision not to prepare a SEIS was legal, since FWS had found that translocation of wolves would have no significant environmental impact and would in fact *disperse* problem wolves and *lessen* the likelihood of depredations because translocated wolves would be released into the 1,000-square-mile Gila Wilderness where livestock were not permitted.¹⁷⁷ The court also held that an injunction against the MWRP would irreparably harm the Mexican wolf as a species and “would be contrary to the public interest in light of the congressional intent expressed in the ESA.”¹⁷⁸ Furthermore, the court argued, while plaintiffs had raised legitimate policy issues, the judge’s role was limited by the U.S. Supreme Court’s recent admonition “to protect agencies from undue judicial interference with their lawful discretion, and to avoid judicial entanglement in abstract policy disagreements which courts lack both the expertise and information to resolve.”¹⁷⁹ The court’s ruling gave FWS latitude to continue negotiating the difficult political and natural landscapes as it implemented the MWRP.

Local residents and officials continued to demand a larger role in the recovery program, insisting that, while they opposed the project, they were willing to work with FWS. Many believed, however, that FWS was dismissive of local concerns. Laura Schneberger, a public lands rancher and president of the Gila Forest Permittee’s Association, complained, “I am not anti-wolf, I am simply pro-rancher and I believe the people of our area come first and should be treated with respect The USFWS does not trust us because we were against the project.”¹⁸⁰ She also argued that FWS was biased in favor of environmental activists:

176. *Id.* at 40.

177. *Id.* at 41.

178. *Id.* at 50.

179. *Id.* at 51 (quoting *Southern Utah Wilderness Alliance v. Norton*, 542 U.S. 55, 66 (2004)).

180. Letter from Laura Schneberger, Pres., Gila Forest Permittee’s Ass’n, to Byers (on file with author).

The most important thing that any rancher should understand about wolf reintroduction is that federal employees who carry it out are intimidated by the environmental community and do just about everything in their power to avoid being sued by them. This fear is apparent in the day-to-day decision making that often goes on behind closed agency doors.¹⁸¹

Howard Hutchison, executive director of the Coalition of Arizona/New Mexico Counties, expressed similar sentiments more bluntly:

It became apparent to us during the last administration that the Mexican wolf was going to be jammed down our throats without any consideration of the adverse impacts or local input. . . . We have no problem with wolves or any predator. Shepards (sic) and herdsmen have lived and dealt with them since the beginnings of animal husbandry. The Fish and Wildlife Service is our problem.¹⁸²

Members of New Mexico's congressional delegation were also suspicious and critical of FWS, as was reflected in their response to the agency's three-year review of the MWRP.

FWS had committed to a comprehensive review of the recovery after three years. It contracted with an independent panel of scientists whose 86-page report, issued in 2001, made several recommendations to improve the likelihood of successful recovery of the Mexican wolf.¹⁸³ According to the report, "by far the most important and simplest change the Service can make" is to "conduct initial releases of captive-born (and wild born if appropriate) Mexican wolves to the Gila National Forest" in Catron County.¹⁸⁴ Second, FWS should "allow wolves that are not management problems to establish territories outside the Blue Range Wolf Recovery Area," including on private property.¹⁸⁵ According to the scientists, the existing rule restricting the wolves' range was made to accommodate local political opposition but needlessly excluded territory that could substantially contribute to wolf recovery.¹⁸⁶

181. Laura Schneberger, *Bad Wolf! Now Go to Your Room*, RANGE, Winter, 2006, at 38.

182. E-mail from Howard Hutchison, Exec. Dir., Coal. of Ariz./N.M. Cntys, to Craig Manson, Assistant Sec'y, Dep't of Interior (Apr. 11, 2003, 05:55 MST) (on file with author).

183. Paul C. Paquet, John A. Vucetich, Michael K. Phillips & Leah M. Vucetich. *Mexican Wolf Recovery: Three-Year Program Review and Assessment* (2001), available at <http://www.fws.gov/southwest/bwofrpt.pdf> (prepared by the Conservation Breeding Specialist Group for FWS).

184. *Id.* at 66.

185. *Id.* at 66-67.

186. *Id.*

Representative Skeen and other opponents pressured FWS to conduct another review, with closer consultation with state government agencies. In response to input from Arizona and New Mexico, along with others, FWS agreed to provide a much broader role for local governments in managing the recovery program. In a Memorandum of Understanding creating an Adaptive Management Oversight Committee (AMOC) to develop “appropriate” management and mitigation practices, six federal and state agencies were named as “lead” agencies, and several counties, including Catron, were identified as cooperating agencies.¹⁸⁷ The AMOC drafted a number of standard operating procedures (SOP) to manage the wolf recovery program, including the controversial SOP 13, which provided for the permanent removal by capture or killing of any wolf with three confirmed livestock depredations in a 365-day period.¹⁸⁸ FWS did not implement the independent science panel’s recommendations to release wolves directly into the Gila National Forest or to allow wolves to establish territory outside BRWRA.¹⁸⁹

In 2003, FWS shooters for the first time shot and killed a Mexican wolf on a ranch in Catron County. The four-year-old female wolf had been translocated to the Gila Wilderness; she then traveled 40 miles to the ranch where she wounded a calf and eluded capture before being shot dead by FWS agents.¹⁹⁰ A spokesperson for FWS said, we “have a

187. Memorandum of Understanding Regarding Mexican Wolf Reintroduction, Ariz. Game & Fish Dep’t-N.M. Game & Fish Dep’t-U.S.D.A. Animal & Plant Health Inspection Serv./Wildlife Serv.-U.S.D.A Forest Serv.-U.S. Fish & Wildlife Serv.-White Mountain Apache Tribe-Ariz. Counties of Graham, Greenlee, and Navajo-N.M. Counties of Catron & Sierra-N.M. Dep’t of Agric., U.S. FISH & WILDLIFE SERV. at 3 (Oct. 31, 2003), http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_MOU.pdf (reflecting the shift of political realities with the new George W. Bush administration in Washington).

188. Adaptive Mgmt. Oversight Comm., *Control of Mexican Wolves*, MEXICAN WOLF BLUE RANGE REINTRODUCTION PROJECT, STANDARD OPERATING PROCEDURE 13.0, ARIZ. FISH & WILDLIFE DEP’T, 10 (2005), http://www.azgfd.gov/w_c/es/documents/MWSOP13.ControlofMexicanWolves.Final.20051010.pdf.

189. Petition for Rulemaking from Michael J. Robinson, Center for Biological Diversity, to Sec’y of the Interior & Dir., U.S. Fish & Wildlife Serv. 13–14 (Mar. 29, 2004) available at <http://www.biologicaldiversity.org/swcbd/SPECIES/MEXWOLF/apapetition.pdf> (“to enhance prospects for recovery of the Mexican gray wolf experimental population, in accordance with scientific findings”). In 2004, wolf activists at the Center for Biological Diversity filed a formal petition asking FWS to implement the recommended reforms, and in 2006, the Center filed a federal suit challenging FWS’s refusal to implement the recommendations. Press Release, Ctr. for Biological Diversity, Suit Challenges Bush Administration Refusal to Implement Science Panel Proposal to Save Faltering Mexican Gray Wolf Recovery Program (Dec. 14, 2006), http://www.biologicaldiversity.org/news/press_releases/mexican-wolves-12-14-2006.html [hereinafter Ctr. for Biological Diversity, 2006 Suit].

190. *Feds Kill First Gray Wolf Since Reintroduction*, EL DEFENSOR CHIEFTAIN, June 4, 2003, www.dchieftain.com/news/points2_06042003.html (the translocated wolf had a record of previous livestock depredations).

responsibility to the rancher, and we have a responsibility to ensure these wolves are out there being good, wild wolves.”¹⁹¹ Some ranchers wanted a more aggressive removal policy against “bad” wolves. The rancher on whose property the wolf was killed, Laura Schneberger, complained in an article titled *Bad Wolf! Now Go To Your Room*, that the “bizarre” removal policy of SOP 13 allows wolves to kill a certain number of livestock, be removed temporarily to captivity, and then be returned to “the Catron killing fields.”¹⁹² Conservationists were critical: “Public lands ranchers in the Gila National Forest expect their grazing allotments to be wildlife free. Nowhere is this truer than in Catron County where grazing permittees have demanded predator control instead of species recovery.”¹⁹³

Over the next several years, 11 wolves were lethally removed pursuant to SOP 13, primarily for conflicts with livestock.¹⁹⁴ Critics of permanent (and lethal) removal blamed FWS for being too subservient to local livestock interests to the detriment of the ESA-mandated recovery program. In congressional testimony, former Wolf Recovery Coordinator David Parsons argued:

FWS has failed in its duty under ESA to conserve and recover the Mexican wolf. . . . A complex web of bureaucratic multi-agency authority sharing, deference to special interests that oppose recovery, mismanagement of public lands, the promulgation of operational procedures that cause excessive management removal of wolves, inattention to science, and the indefinite suspension of the recovery planning process are precluding the FWS [from meeting its recovery mandate].¹⁹⁵

Intense conflicting pressures and starkly different perspectives on wolf-recovery policies had etched a new but volatile and unstable political landscape for FWS. Representative Skeen and his successor, Steve Pearce (R), repeatedly threatened to cut off funding for the MWRP. Referring to area ranchers, Howard Hutchinson described FWS as “bullies who are taking advantage of people who don’t really have the resources

191. *Id.*

192. Schneberger, *supra* note 181, at 38–40.

193. Melissa Hailey, Commentary, *It’s Time to Confront Policies that Harm Mexican Gray Wolf Numbers*, ALBUQUERQUE TRIB., Aug. 9, 2007, <http://www.abqtrib.com/news/2007/aug/09/commentary-its-time-confront-policies-harm-mexican/>.

194. Press Release, Defenders of Wildlife, Endangered Mexican Wolves Found Firmer Ground Last Year (Feb. 6, 2009), http://www.defenders.org/newsroom/press_releases_folder/2009/02_06_2009_mexican_wolves_held_steady_in_2008.php.

195. David Parsons, Science Fellow, The Rewilding Inst., Comm. on House Natural Resources, Statement Concerning the Mexican Gray Wolf (May 21, 2008), 2008 WL 2140462.

to fight.”¹⁹⁶ Pro-wolf activists had a different view: “Recovering wolves is not rocket science. It just takes respect for biology and some political will. Unfortunately, Fish and Wildlife bureaucrats have neither.”¹⁹⁷ The election of Democrat Bill Richardson as New Mexico’s governor in 2002 shifted the political ground in the state. His administration offered support for reintroduction and translocation and opposition to SOP 13, a “180-degree switch” from the previous administration.¹⁹⁸ The capture of control of both houses of Congress by the Democrats in 2006 also changed the political landscape, as wolf opponents like Representative Pearce and Senator Domenici lost committee chairmanships and were now part of the congressional minority.

In 2006, the Catron County Commission passed Resolution No. 33-2006, a Declaration of Catron County State of Economic and Agricultural Emergency due to the presence of wolves in the county.¹⁹⁹ County residents and officials had complained of the potential physical and psychological harm to children and others from wolves in the county. According to Jess Carey, Catron County wolf interaction investigator, psychological trauma results when

a child witness[es] a family pet gutted and killed by a wolf on the front porch, or farm animals killed by wolves that won’t be scared off. We’re seeing nightmares, sleeplessness, [and] children afraid to go out of their homes to play, afraid [to] walk from their house to the bus stop to go to school. The shameful thing is it appears that the Fish and Wildlife Service Wolf Recovery people do not care about the rural children and families that are damaged and suffering because of the program.²⁰⁰

In 2007, in accordance with the resolution, the Catron County Commission adopted an ordinance that provided for the immediate removal of habituated wolves and directed the County Wolf Interaction

196. Cade, *supra* note 118 (quoting Howard Hutchinson, Executive Director, Coalition of Ariz./N.M. Counties).

197. Ctr. for Biological Diversity, 2006 Suit, *supra* note 189 (quoting Michael Robinson).

198. Jeff Jones, *State Runs with Wolves: Reintroduction Receives Support*, ALBUQUERQUE J., Apr. 8, 2004, at D3. See also Jeff Jones, *Gov. Richardson Chastises Federal Agency—Gov. Wants Wolf Policy Suspended*, ALBUQUERQUE J., July 7, 2007, at D1 (Richardson came under withering criticism from local reintroduction opponents).

199. Catron Cnty., N.M., Res. No. 33-2006 (Feb. 15, 2006).

200. Lif Strand, *The White Mountains: Bring your skis, your hiking boots—and your favorite handgun*, PROPERTY RIGHTS RESEARCH (Sept. 3, 2006), http://www.propertyrightsresearch.org/2006/articles09/white_mountains.htm. Catron County built wolf shelters at school bus stops. Rene Romo, *Wolf-Proof Shelters Go Up for School Kids*, ALBUQUERQUE J., Dec. 2, 2007.

Investigator to “trap,” “pursue,” and “permanently remove” wolves within the BRWRA at the direction of the Commission.²⁰¹ Several months later, under threat of legal action, the Commission substantially amended the ordinance to seek authority from FWS to “take” problem wolves.²⁰² Nevertheless, environmental organizations sued the county, alleging ESA violations and seeking an injunction to bar any unilateral county action against wolves. As of 2010, a federal court was still weighing whether Catron’s ordinance and actions violate federal law.²⁰³

In 2008, Defenders of Wildlife sued FWS alleging that the creation of AMOC and the adoption of SOP 13 violated NEPA and the ESA.²⁰⁴ The suit asked the court to prohibit any more wolf removals under SOP 13. According to Defenders of Wildlife, the Interagency Management Plan, the FEIS, and the 10(j) rule all require FWS to retain ultimate management authority for wolf recovery.²⁰⁵ Furthermore, according to the complaint, SOP 13 created a hard rule for lethal control of wolves without consideration of factors vital to wolf recovery as required by the Final Rule. Wolf removals under SOP 13 are the primary cause of the failure of the reintroduction program to meet its goals, according to the lawsuit.²⁰⁶ In early 2009, FWS moved to dismiss the suit, but in late 2009, under new leadership at DOI and FWS, a settlement was reached under which FWS agreed to make no further wolf management decisions pursuant to SOP 13 and recognized that the AMOC “has no decision-making authority” over FWS management of the MWRP.²⁰⁷

Also in 2009, federal officials, rancher associations, and environmental groups reached an agreement to establish a Mexican Wolf Interdiction Trust Fund from private donations and government funding. This fund would compensate ranchers for livestock kills, finance grazing techniques that prevent depredation by wolves, and pay for range riders

201. Catron Cnty., N.M., Ordinance No. 001-2007 (Feb. 7, 2007).

202. Catron Cnty., N.M., Amended Ordinance No. 001-2007 (Apr. 18, 2007).

203. *Wildearth Guardians v. Bd. of Cnty. Comm’rs*, Civ. No. 07-00710 MV/WDS (D.N.M. filed Mar. 31, 2009), <http://www.nmcourt.fed.us/DrWeb/view-file?full-path-file-name=%2Fdata%2Fdrs-new%2Fdm%2Fdocuments%2F2009%2F03%2F31%2F0002209810-000000000-07cv00710.pdf> (memorandum opinion and order denying Plaintiff’s Motion for Summary Judgment).

204. Complaint for Declaratory & Injunctive Relief at ¶ 19, *Defenders of Wildlife v. Tuggle*, 607 F. Supp. 2d 1095 (D. Ariz. 2009) (Nos. CV 08-280 TUC DCB, CV 08-820 PHX DCB).

205. *Id.* at ¶ 17.

206. *Id.* at ¶¶ 36–38.

207. Consent Decree, *Defenders of Wildlife v. U.S. Fish & Wildlife Serv.*, (D. Ariz. 2009) (No. 08-cv-280-TUC-DCB), *sub nom.* *Defenders of Wildlife v. Tuggle*, 607 F. Supp. 2d 1095 (D. Ariz. 2009).

to keep wolves away from livestock.²⁰⁸ According to FWS, the program will support proactive, on-the-ground practices that reduce the potential for depredations, thus simultaneously supporting landscape conservation and improved land use practices in the Southwest.²⁰⁹ Livestock interests were cautious but hopeful in their support. Caren Cowan, executive director of the New Mexico Cattle Growers Association said, "We're willing to try most anything. . . . A lot of things all come down to the economic sustainability of the industry, and is the program going to provide that to us? At least there is a hope of that[.]"²¹⁰ This agreement opened a path for further cooperation on restoring the wolf to its historic range in the southwest.²¹¹ In 2009, President Obama signed the Omnibus Public Land Management Act of 2009 that included a bipartisan provision, co-sponsored by Democratic Senator Jon Tester of Montana and Republican Senator John Barrasso of Wyoming, creating a wolf depredation compensation fund with both state and federal money.²¹² As a result, Defenders of Wildlife announced that, after 23 years of compensating ranchers for livestock losses to wolves, it would now shift resources to its "Wolf Coexistence Partnership," a cooperative program working with ranchers to use non-lethal tools to protect livestock and discourage wolves from preying on them.²¹³

In 2010, however, cooperation coincided with continued conflict. Alleging NEPA violations, Catron County joined anti-wolf activists, the Americans for Preservation of Western Environment, and ranching associations in a lawsuit against FWS over the settlement that led to the end of implementation of SOP 13. The Center for Biological Diversity

208. *Mexican Wolf/Livestock Interdiction Trust Fund*, U.S. FISH & WILDLIFE SERV. (2009), <http://www.fws.gov/southwest/docs/MexicanWolfFundAgreementfinal.pdf> (Cooperative agreement between FWS and the National Fish and Wildlife Foundation).

209. News Release, U.S. Fish & Wildlife Serv., Mexican Wolf Interdiction Trust Fund Cooperative Agreement Signed (Oct. 6, 2009), <http://www.fws.gov/SOUTHWEST/docs/MexicanWolfInterdictionFundAgreementNR10-06-09.pdf>.

210. Susan Montoya Bryan, *Fund Will Help Ranchers Deal with Mexican Wolves*, MEXICANWOLVES.ORG (2009), <http://www.mexicanwolves.org/index.php/news/59/51/Fund-will-help-ranchers-deal-with-Mexican-wolves>.

211. Although in early 2010, wolf advocates filed a federal lawsuit against the Obama administration's DOI and FWS, alleging ESA violations and seeking to force FWS to list the Mexican gray wolf as an endangered subspecies or distinct population segment in order to provide it with stronger legal protections. See *Complaint for Declaratory and Injunctive Relief*, Center for Biological Diversity v. Salazar, No. 1:10-cv-00149-EGS (D.D.C. Jan. 27, 2010).

212. Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, 123 Stat. 991.

213. Press Release, Defenders of Wildlife, Defenders Shifts Focus to Wolf Coexistence Partnerships (Aug. 20, 2010), http://www.defenders.org/newsroom/press_releases_folder/2010/08_20_2010_defenders_shifts_focus_to_wolf_coexistence_partnerships.php.

and Defenders of Wildlife filed as intervenors. A federal court will once again be the arena for the ongoing showdown.²¹⁴

VI. ANALYSIS

The showdown at Catron—between the county and federal governments, ranching associations and environmental organizations, and local residents and federal officials—has been marked mostly by contested ground but also occasionally by common ground. The shape of the contested and common ground, and thus the policies that govern the reintroduction of the lobo, has fluctuated in response to the changing relative strengths of the players in Washington, D.C., Albuquerque, and Catron County, as well as the decisions made by judges within the Department of the Interior and U.S. courts.

There are many critics of this process by which policy evolves through the ecological interaction of contending and cooperating political and natural forces. Local governments and organized industry interests argue that the current political landscape empowers outside interests to use the rule-making process and the courts to impose a radical agenda that is indifferent or hostile to the culture and traditions of the Southwest.²¹⁵ Pro-wolf activists claim that national values and objectives reflected in the ESA are constantly undermined by a rule-making and enforcement process that is too often manipulated by local economic and political elites.²¹⁶

Scholars of the public lands policymaking process fall into both camps. On one side are critics who argue that the federal effort to command and control land use decisions in every corner of the landscape leads to bureaucratic imposition of mandates that are ignorant of local conditions or to a planning and litigation pattern that creates policy paralysis and uncertainty.²¹⁷ On the other side are those who assert that policies flowing from agency rule-making and litigation favor well-heeled special interests, at the expense of the public interest, and put

214. Press Release, Center for Biological Diversity, Conservationists Intervene in Lawsuit to Protect Mexican Gray Wolves (Nov. 12, 2010), http://www.biologicaldiversity.org/news/press_releases/2010/mexican-gray-wolf-11-12-2010.html. In February 2011, the plaintiffs filed to dismiss their own case after the judge had dealt them several setbacks. See Rene Romo, *Lawsuit Against Wolves Withdrawn*, ALBUQUERQUE J., Feb. 5, 2011, available at <http://www.mexicanwolves.org/index.php/news/345/51/Good-News-In-the-Press-Lawsuit-Against-Wolves-Withdrawn>.

215. See D'Lyn Ford, *The Catron Way*, N.M. RESOURCES, Fall 1995, available at <http://aces.nmsu.edu/pubs/resourcesmag/fall95/catron.html>; Schneberger, *supra* note 181, at 38.

216. See ROBINSON, *supra* note 10.

217. NELSON, *supra* note 24.

power in the hands of bureaucrats and local elites who are unaccountable to the public.²¹⁸

While the case of cows and wolves in Catron County displays elements of both criticisms—bureaucratically imposed mandates from Washington, often forced by activist victories in federal courts, along with timid local enforcement that sought to accommodate organized ranching interests—it also reflects an ecological policymaking process that is in some ways inevitable but that also should leave observers more sanguine. Statutory goal-setting, administrative rule-writing and enforcement, and litigation create openings on the political landscape for collaborative and adaptive policy evolution. FWS navigates a political landscape marked by complicated and changing political pressures and a natural southwestern landscape marked by complex wolf ecology. The agency's decisional latitude in defining what constituted the Mexican gray wolf population and its historic range, its designation of the reintroduced wolves as an “experimental, nonessential” population, its work with Defenders of Wildlife on a program of private compensation for wolf predation, its participation in a collaborative Wolf Interdiction Trust Fund, its interaction with various local interests in the AMOC and the Interagency Management Advisory Group, and its recent retreat from that policy satisfied few of the involved parties: All of these enabled the wolf-reintroduction program to make headway through difficult terrain.²¹⁹

This ecological process—by which collaborative and adaptive management arrangements get made and unmade—raises both hope and fear among interested parties and scholars. Hope resounds in some quarters in that collaboration and common ground can replace the adversarial and litigious process of recent decades and can generate public lands policies that can more flexibly satisfy multiple land use demands,

218. Michael C. Blumm, *The Bush Administration's Sweetheart Settlement Policy: A Trojan Horse Strategy for Advancing Commodity Production on Public Lands*, 34 ENVTL. L. REP. 10, 397 (2004) (arguing that the George W. Bush administration used the administrative process to reach “sweetheart deals” favorable to the extractive industries); See also, William W. Buzbee, et al., *Regulatory Underkill: The Bush Administration's Insidious Dismantling of Public Health and Environmental Protections*, PROGRESSIVE REFORM (2004), http://www.progressive-reform.org/articles/Underkill_406.pdf (arguing that the George W. Bush administration used regulatory tools to turn over public resources to private corporations).

219. See Martin Nie, *The Underappreciated Role of Regulatory Enforcement in Natural Resource Conservation*, 41 POL'Y SCI. 139 (2008) (describing the “co-evolution” of regulation and litigation policy approaches with other less adversarial and more collaborative approaches and how the delegation by FWS of some decision-making authority to the AMOC was challenged in federal court and the agency retreated from the policy under leadership from the new Obama administration).

including conservation.²²⁰ Law professor Holly Doremus writes of the “enticing hope” in which adaptive ecosystem management can become the foundation for a “new age of environmental restoration” through which we can “finally find a way to balance our desires for material goods with the needs of the natural world.”²²¹ Public policy professors Klyza and Sousa describe an “interesting and innovative” deal between federal agencies, state and local governments, landowners, developers, and environmental activists to resolve a dispute over habitat for an ESA-protected butterfly in California.²²² This policy deal, generated through collaboration on the ground, was inconsistent with the ESA, probably illegal, and prompted congressional action to amend the ESA to legalize the deal and others like it.²²³

Klyza and Sousa argue that these collaborative agreements are “here to stay” because as proponents note, they are “a way to get around the welter of laws, regulations, agencies, and national groups that block on-the-ground progress.”²²⁴ Changing the “web of environmental laws, regulations, and institutions” is, according to Klyza and Sousa, a “gargantuan enterprise.”²²⁵ Congressional action has opened collaborative pathways, but these authors lament that it has failed “to break through the labyrinth.”²²⁶

There is also fear, however, that these ecological policymaking processes may come to resemble those of the old “interest group liberalism,” which critics argue produced “policy without law,” evaded democratic accountability, and allowed private interests to capture public power.²²⁷ Doremus warns of the danger that adaptive management “can be used as a smokescreen to conceal political accommodations that sacrifice the protection of species or natural systems.”²²⁸ She argues that polit-

220. See KLYZA & SOUSA *supra* note 8, at 233–40 (describing cases of habitat conservation planning: the Quincy Library Group and the Quivira Coalition).

221. Holly Doremus, *Adaptive Management, the Endangered Species Act, and the Institutional Challenges of “New Age” Environmental Protection*, 40 WASHBURN L.J. 50, 88 (2001).

222. Sousa & Klyza, *supra* note 34, at 383–84.

223. *Id.* at 384 (offering an example of the ecology of policymaking, as local agency officials and stakeholders exploited statutory and administrative openings to collaborate on a mutually satisfying but extralegal deal that Congress then ratified retroactively); see also Robert B. Keiter, *The Law of Fire: Reshaping Public Land Policy in an Era of Ecology and Litigation*, 36 ENVTL. L. 301 (2006) (showing that this process is also evident in federal fire policies).

224. Sousa & Klyza, *supra* note 34, at 438–39.

225. *Id.* at 440–41.

226. *Id.* at 442.

227. THEODORE J. LOWI, *THE END OF LIBERALISM: IDEOLOGY, POLICY, AND THE CRISIS OF PUBLIC AUTHORITY* 55–97 (1969); see also KLYZA & SOUSA, *supra* note 8.

228. Doremus, *supra* note 221, at 88.

ical pressures on federal agencies inhibit biologically rational action, as is evident in inconsistent ESA enforcement by FWS.²²⁹ According to Doremus, true adaptive ecosystem management requires agency responsiveness to science, even when it would be politically or economically painful but our existing institutions are ill-suited to this task. She argues that corrective steps could be taken, including the development of institutions that “counter our human tendencies to avoid conflict, assume the best, and cling to outmoded assumptions.”²³⁰

The case of the Mexican wolf illustrates how the public lands policymaking process is probably not up to the “gargantuan” task of breaking through the labyrinth of existing laws, regulations, and institutions. The political landscape is not easily bulldozed by those who move across it, including the president, Congress, the states, organized interests, or private property owners. Institutions that counter our human tendency to accommodate political pressure rather than impose the economic pain of “biologically rational” decisions are not likely to be developed. Collaborative and locally adaptive policy arrangements will emerge and evolve not just to “get around” the “welter” and “web” of laws and institutions but will also emerge as the *product* of that web and welter. That is the nature of an organic, ecological policymaking process. Alternatives that seek to remove politics from the political and natural landscapes—either by relying much more on markets to allocate resources or on the marriage of science and bureaucracy to impose biologically rational plans on the land—are less likely to emerge given our political ecology.

The ecological policymaking process can be frustrating. Interests must constantly defend their place on the landscape from invaders and predators and must seek allies, shelter, and security. Ranchers face constant pressure from non-ranchers, often from outside the region, which threatens their economic and cultural security. For conservation groups, incrementalism, compromise, delay, resistance, and law-breaking thwart their objectives. But the process allows experimentation, learning, adaptation, evolution, and cooperation—in law, regulation, markets, and civil society. The process is open to competition among values and interests, resolves the competition through compromise and change, and is evolutionary in that resolutions are always open again to revision.

VII. CONCLUSION

Multiple statutes, dozens of regulations and standard operating procedures, numerous land management plans, and several court rul-

229. *Id.* at 56.

230. *Id.* at 89.

ings lay out the details of the policies that govern the reintroduction of the Mexican gray wolf to its historic range in the Southwest. Ultimately, however, policies are not text, and their implementation is not mechanical. Nor are those policies static. Policies evolve in an ecological process from the interaction and showdown of political and natural landscapes.

The showdown in Catron County over wolves and cows continues to play out, reshaping public lands policy on the ground, and reshaping the ground—or natural landscape—itsself. As a consequence of the policies, Mexican wolves are now in the Gila region, with ecological consequences for elk, deer, and other prey, as well as for livestock and their owners, and for ranch families.²³¹ The reintroduced Mexican wolf has not yet been recovered, but in many ways it has been remade. Captive-bred wolves are intensively managed by government scientists and bureaucrats who breed them, name and number them, collar them, “soft release” them, translocate them, radio monitor them, recapture them, provide health care to them, and sometimes even kill them.²³²

This reshaped natural landscape is remaking the political landscape. As wolf release, relocation, and removal policies have been altered, the power and roles of local, state, and federal agencies have shifted, the skill, effectiveness, and technical sophistication of organized interests have changed, and the values and preferences held by the public have evolved.²³³ In the showdown at Catron, local residents and their representatives were able to press hard on federal legislators, scientists, and bureaucrats, and thus significantly impact how wolf policies and grazing practices played out on the ground. Environmental activists, along with the local residents and national supporters who sided with them, also affected how and where wolves were released onto or removed from the land and how and where cattle graze the public lands.

231. See generally Jim Mimiaga, *A Report from the Front in the Mexican Wolf War*, FOUR CORNERS FREE PRESS, Feb. 2009, <http://www.fourcornersfreepress.com/news/2009/020904.htm> (noting that the wolf has, for the elk, sparked to life “a hard-wired instinct to beware of what lurks in the shadows”).

232. See Ariz. Game & Fish Dep’t, *Mexican Gray Wolf Blue Range Introduction Project, Reports & Documents* (2009), http://www.azgfd.gov/w_c/wolf/reports.shtml (documenting and reporting AGFD activities).

233. See Research & Polling, *Wolf Recovery Survey—New Mexico*, LOBOS OF THE SOUTHWEST (2008), <http://www.mexicanwolves.org/pdf/Reading18WolfSurveyNM.pdf> (showing increased public support, even in New Mexico, for wolf reintroduction).

By 2010, 92 Mexican wolves were released into the BRWRA,²³⁴ with 42 wolves still in the wild, including only two breeding pairs.²³⁵ Thirty-two wolves were illegally shot to death, 12 were killed in vehicle collisions, and nine died of unknown causes.²³⁶ Another 11 were killed, or “lethally removed,” by FWS for livestock depredation. FWS estimated that 76 cattle were killed by wolves.²³⁷ Rancher associations claimed the number was much higher, claiming more than 1,000 cattle fell prey in the new landscape.²³⁸

Conflicting pressures still bear down on FWS. There is still a strong push for policies that retreat from wolf reintroduction. Other forces press for policies that would use tax dollars to buy out ranchers and remove their cattle from public lands.²³⁹ Another administration in Washington and new leadership at FWS continue to change the political landscape, making it more hospitable to wolf recovery. Whether and how wolves and cattle coexist and co-evolve in western New Mexico will be continue to be determined through the ecology of the public lands policymaking process.

234. Initial Releases, *The Mexican Wolf Recovery Program—Population Statistics*, U.S. FISH & WILDLIFE SERV. (2009), http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_releases.pdf.

235. Population Count, *The Mexican Wolf Recovery Program—Population Statistics*, U.S. FISH & WILDLIFE SERV. (2009), http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_popcount.pdf.

236. Mortality Causes, *The Mexican Wolf Recovery Program—Population Statistics*, U.S. FISH & WILDLIFE SERV. (2009), http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_mortality.pdf.

237. Mimiaga, *supra* note 231. See also Removal Causes, *The Mexican Wolf Recovery Program—Population Statistics*, U.S. FISH & WILDLIFE SERV. (2009), http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_removals.pdf

238. Mimiaga, *supra* note 231.

239. Julie S. Thrower, *Ranching With Wolves: Reducing Conflicts Between Livestock and Wolves Through Integrated Grazing and Wolf Management Plans*, 29 J. LAND RES. & ENVTL. L. 319, 350 (2009).

