



A View of the Summit

C R A G

FALL 2015 NEWSLETTER



WILD PLACES, HUMAN SPACES

Rewilding the Pacific Northwest

By Maura Fahey, Associate Attorney

To be whole. To be complete. Wildness reminds us what it means to be human, what we are connected to rather than what we are separate from. – Terry Tempest Williams

We all have a place we would fight to protect, a wild place where we love to play. Whether it is a mountain, a forest, a river, or a backyard garden, we might do anything to preserve that special place where we go to get lost and find ourselves. For over 14 years, Crag has represented communities throughout the Pacific Northwest in protecting and restoring those special places. In some cases, we fight to preserve untouched wilderness for the benefit of future generations; in others, we work to restore a natural place or resource from the harsh results of human interaction.

While there is often a tension between the desires of humans and the needs of nature, we find that there is a delicate balance to be struck so that we may continue to enjoy our favorite spaces for many years to come. As Aldo Leopold wisely said, “conservation is a state of harmony between men and land.” To achieve that harmony, and to ensure that we are preserving a natural world for future generations, we need to keep our extractive and polluting habits in check. Crag and our clients work every day to do just that.

In this issue of A View of the Summit you will find stories of some of Crag’s current work to protect a few of the iconic wild places of the Pacific Northwest. You’ll learn about our ongoing efforts to protect the north side of Mt. Hood, a local treasure that has played a central role in Crag’s work since our beginning. Years after Crag and our clients secured a binding obligation on the U.S. Forest Service to execute a land trade that would expand the Mt. Hood Wilderness, we are still fighting to ensure the federal government follows through on the deal to protect this special place from development.

Crag is a client-focused law center that supports community efforts to protect and sustain the Pacific Northwest’s natural legacy.



Crag staff having a wild time on the Santiam River.

You'll get a first glimpse at our work on behalf of the Nez Perce Tribe to restore wildlife and fish habitat and watershed health along the Willamette River to mitigate for decades of harmful human activities along the Portland Harbor. We also share updates on our work to protect the Columbia River Gorge. On the Washington side, we're fighting unsustainable development along the Wild and Scenic White Salmon River; and in Oregon, we're continuing our efforts to stop the ill-conceived proposal to give away publicly owned state water rights to Nestlé to be put in plastic bottles and sold out-of-state. And you'll learn

alarming news about the wolves of the Tongass National Forest and Crag's efforts to protect the old growth temperate rainforest and endemic species of our nation's largest national forest.

These are stories of just a few of the wild places where we love to play and will fight to protect. Our connection to these wild places guides our work, but more importantly, roots our sense of place.

What's inside?

Cover photo: "Alpine and Ridge"
by Carl Johnson. A framed print of
this photograph will be featured in the
Wild Shots Auction on October 24th.

www.carljohnsonphoto.com

crag.org/wildshots

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Not Letting Up: Mt. Hood's North Side – Wild and Free, Eventually

by Ralph Bloemers, Co-Executive Director

Nearly a decade and a half ago, Crag took on a case challenging a proposed destination resort that would have converted over a thousand acres on the wild north side of Mt. Hood into roads, houses, a golf course, clear cut ski runs, and shops. We still have the plans for the proposal in an envelope in our office, which we obtained by filing suit against Mt. Hood Meadows and Hood River County. Chris Winter and I had just formed Crag, and we were still finding our feet as an organization. We knew that protecting Mt. Hood forests was a passion we shared with many others. But we didn't know how long and hard we would need to fight; we just knew that we would never give up.

In 2005, after four years of legal battles, we helped local residents and conservation groups in the Cooper Spur Wild & Free Coalition reach a settlement with Mt. Hood Meadows and Hood River County. The “clean sweep” as we called it, provided for the protection of over 4,000 acres of forested Wilderness and the Crystal Springs drinking watershed. In exchange for its private land holdings on the north side of Mt. Hood, Meadows would receive up to 120 acres of developable land in Government Camp, where development is already occurring. The



Mt. Hood from Lolo Pass. This photo by Alan Kjosness will be featured at Crag's Wild Shots Auction.



Mt. Hood's north side at Cooper Spur speaks silently in subtle ways about the nature of our true selves. Photo by Ralph Bloemers.

settlement was incorporated into the Omnibus Public Lands Act, and signed into law by President Obama in 2009. Congress gave the Forest Service 16 months to get the trade done.

The deadline came and went, and the trade was not completed. This July marked five years since the deadline passed, and still the Forest Service has yet to keep its end of the bargain. The Hood River Valley Residents Committee and its allies in the Cooper Spur Wild & Free Coalition decided they could no longer afford to sit by and see this historic solution threatened by the agency's inability to meet the Congressional mandate. At the end of July, the Residents Committee filed suit asking for a court order forcing the agency to complete the trade that would trigger protections for the north side. The conservation groups seek continual judicial supervision, because we need assurance that the Forest Service will not continue to fumble.

Too much has been invested and too much is at stake. Mt. Hood is a place that feeds our souls. The forest on the north side of Mt. Hood cools and cleans drinking water for thousands of Oregonians. The Wilderness provides a place of inspiration and solace for Oregonians to rejuvenate. The historic backcountry is one of a kind with structures dating back to the late 1800s and early 1900s that are still used today for overnight lodging. This has been a long road, with more twists and turns than we could have imagined. But rest assured, we will not tire, and we will not let up until the splendor and the beauty of the north side of Mt. Hood is permanently protected.

Restoring Cultural and Natural Values in the Lower Willamette

by Courtney Johnson, Staff Attorney

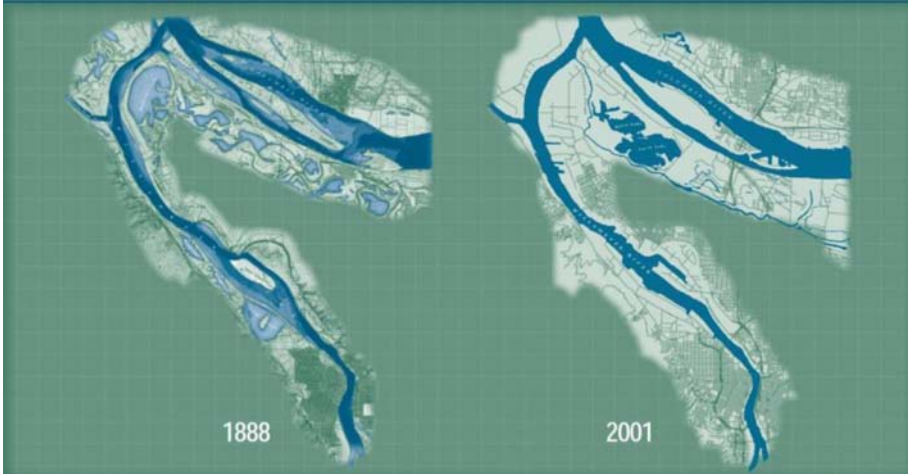
This spring, Crag began a new relationship with the Nez Perce Tribe, representing the Tribe's interests in the Portland Harbor Superfund project on the Willamette River. The Nez Perce Tribe is a trustee of natural and cultural resources in the river, and Crag represents the Tribe in its role in both the cleanup and restoration of the Portland Harbor.

The Nez Perce historically hunted and fished on land totaling around 14 million acres, encompassing virtually all of what is now north central Idaho, northeastern Oregon, and southeastern Washington. Tribal members would travel all the way to the Willamette River for seasonal fishing and gathering events. The Tribe's current reservation lands on the Clearwater River are connected by flows from the Snake River and the Columbia to the Pacific Ocean.

Sadly, much of this land is no longer what it once was. Not only has the Tribe's territory been decimated through a series of treaties that resulted in progressively smaller reservation lands, but many historic hunting and fishing grounds have been devastated by industrial development and pollution. In December of 2000, the Environmental Protection Agency (EPA) designated an 11-mile stretch of the lower Willamette River, from near its confluence with the Columbia to approximately the Broadway Bridge in Portland, as a "Superfund" site under federal law. This designation recognizes that over a century of industrial uses and landfilling activities along the river have resulted in contamination of the riverbed and shore sediments, and concomitant injury to natural and cultural resources in the river.

At the Superfund site, the EPA takes primary responsibility for identifying the types and extent of the contamination and the associated risks to human and ecological health, and develops a plan for the clean up of the river. EPA and the Oregon Department of Environmental Quality work together to restore river health to protect future river uses. At the same time, trustees for the public and for tribal rights evaluate the injury caused by the contamination, and assess the damage to recover for those past losses over time. These trustees may also identify appropriate restoration projects to assist in the

recovery of important species like salmon, eagles, and mink. Restoration activities will improve habitat conditions along the lower Willamette River shorelines and floodplains, focusing on the most important habitat needs of injured fish and wildlife.



Industrial development has changed the shape of the Willamette River. Image by City of Portland.

The Superfund laws are “polluter pays” laws, meaning that the cleanup and restoration will eventually be funded by those industries responsible for the pollution. In the case of Portland Harbor, with a long history of industrial activity over significant stretch of river included in the site, it can be complicated to determine who is responsible for different pollution sources. In addition, these potentially responsible parties have an interest in seeing low clean up costs, which may mean more contamination staying in the river. Nevertheless, the responsible government agencies have a duty to ensure cleanup to a level that protects human health and ecological resources. And the natural resource trustees will seek compensation from the parties responsible for the contaminants to restore, rehabilitate, or replace the injured natural and cultural resources.

The clean up and natural resource damage laws are far from perfect, but it is our hope that at the end of this process, the lower Willamette River will return some of its wild places for fish, wildlife, and people.

Victory for the White Salmon River

by Ralph Bloemers, Co-Executive Director



A kayaker scopes Steelhead Falls in the newly restored lower Gorge of the White Salmon River.

This summer we celebrated the end of a long battle to protect the truly special White Salmon River. From its headwaters high on Mt. Adams, the river twists and turns through the longest vertical walled basalt gorge in the Columbia basin. The river is world-renowned for its thrilling whitewater rafting and kayaking.

In 2009, Klickitat County enacted a zoning proposal that greatly increased development along the river's banks, threatening the clean, cool water that is critical for the recovery of wild fish and which provides drinking water for local citizens.

In 2011, as Condit Dam came down and we welcomed the return of wild salmon, we filed suit on behalf of the Friends of the White Salmon River and the Friends of the Columbia Gorge alleging that the County had violated the state environmental laws and constitutional protections for private property. In 2013, the Washington Superior Court held that the County's extensive rezoning plan was unconstitutional, and that the County failed to protect fish, wildlife, and water supplies from sprawling development. The County appealed, and the case was presented to the Washington Court of Appeals this past spring. Then, in an unexpected turn, this summer the County repealed the controversial ordinance wholesale.

Even with this victory, the local community knows that it will need to remain engaged and vigilant, as the County is likely to advance another proposal in the future. Now that the dam has been removed, the river's future can only be secured by stewardship of the land around it.

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RSVP BY OCT 10

Wolf Population Plummet; State and Federal Management Agencies Stand Idly By

by Oliver Stiefel, Associate Attorney

The population of Alexander Archipelago wolves on Prince of Wales Island in the Tongass National Forest of Southeast Alaska is plummeting, according to a June report released by the Alaska Department of Fish and Game (ADF&G). Crag has been working with its clients—a coalition of environmental organizations dedicated to preserving the Tongass—to spur the responsible agencies into protective action before it's too late.

The new report, based on research conducted by ADF&G and the U.S. Forest Service, estimates that the wolf population on Prince of Wales Island in the fall of 2014 was between 50 and 159, and most likely about 89 wolves, down from an estimated population of 250 to 350 in the mid-1990s. Notably, the estimate does not take into account the 29 wolves reported taken in the 2014/2015 winter trapping season, nor does it account for illegal take of wolves, which studies indicate may be substantial.

Alexander Archipelago wolves are a rare subspecies of grey wolf endemic to the coastal rainforests of Southeast Alaska. The population on Prince of Wales—the third largest island in the U.S., roughly the size of Delaware—is genetically distinct and geographically isolated from other populations in Southeast Alaska. The Fish and Wildlife Service in 2014 found that protecting the Alexander Archipelago wolves under the Endangered Species Act “may be warranted,” and is set to decide whether to list the wolves under the Act by the end of this year.

To protect these wolves, Crag and its clients asked management agencies to cancel the hunting and trapping season on Prince of Wales and surrounding islands. In the June report, ADF&G stated that it planned to keep the season open. The group also asked the Forest Service to suspend logging operations for its Big Thorne timber sale, to reconsider impacts on wolves.



The population of Alexander Archipelago wolves on Prince of Wales Island in the Tongass National Forest is plummeting. Photo © Robin Silver Photography.

Big Thorne is the largest timber sale on the Tongass in over two decades. The timber sale would cut down over 6,000 acres of old-growth rainforest that provides key habitat for Sitka black-tailed deer—the primary prey of the wolf—while building more logging roads that serve as access points for hunters and trappers that target wolves both legally and illegally. Crag brought a lawsuit against the Forest Service for authorizing the sale without accounting for existing levels of unsustainable wolf mortality. That case is currently before the Ninth Circuit Court of Appeals. Briefing in the case will wrap up by early September, and a hearing will take place in the late fall or winter.

The Tongass is the nation's largest national forest and contains the largest tract of unspoiled temperate rainforest on the planet. This rainforest provides habitat for countless rare and endemic species, and supports key spawning and rearing habitat for some of the most robust salmon and steelhead runs in the world. The centuries-old trees, dense foliage, and productive soils may store more than ten times more carbon than any other national forest.

Despite these incredible ecological values, the Tongass remains the only national forest in the country where clear-cut logging of old growth occurs. Due to a 60-year legacy of commercial operations, once thriving wildlife populations like the wolf face existential threats. We hope that the responsible agencies will take the necessary steps to protect the few remaining wolves on Prince of Wales in the short-term, until long-term protections—listing the wolf under the ESA, and halting old-growth timber harvest—can kick in to reverse the alarming population trend.

Tapping the Gorge as Our Rivers Run Dry

by Maura Fahey, Associate Attorney

Since 2012, Crag has represented local watchdog groups Bark and Food & Water Watch in the fight to keep Nestlé from tapping publicly owned spring water for private profit in the Columbia River Gorge. The proposal was first set into motion over six years ago by former Governor Kulongoski as an economic enhancement project for the City of Cascade Locks. However, in light of current drought conditions throughout the state, the proposed construction of a monstrous, water-guzzling facility by a poorly behaved global corporation is even more disconcerting now than it was three years ago.

With Oregon's snowpack this year marking the lowest on record in the past 35 years, nearly the entire state is facing severe drought conditions. As of July, 23 of Oregon's 36 counties had declared drought, including Hood River County where Nestlé is proposing to bottle 118 million gallons of spring water each year for out-of-state export. In response to the worsening drought conditions, Governor Brown declared July "Water Awareness Month" and issued an executive order requiring state agencies to reduce their water consumption by 15 percent. In stark contrast, the Governor has taken no action to stop the Oregon Department of Fish and Wildlife's (ODFW) efforts to hand over state-owned water to Nestlé, despite thousands of emails and letters from the public requesting an end to this water privatization.

Under the initial proposal, ODFW would provide spring water from its Oxbow Springs fish hatchery to the City of Cascade Locks for sale to Nestlé, and in return, the hatchery would receive well water from the City. That plan, which would have kept ODFW's water rights in state hands, required the Oregon Water Resources Department (OWRD) to consider whether the proposal was in the "public interest." ODFW and the City pursued that path for several years through extensive public commenting and a lengthy administrative review process in response to challenges by Crag's clients.

However, just as OWRD was about to reach its review of whether or not the proposed exchange would serve the public interest, ODFW and the City suddenly changed course. Now, instead of exchanging water for water without altering the state's rights, ODFW is proposing to permanently trade a portion of its water rights to the City for sale to Nestlé.

In Oregon, water is recognized as a public trust resource, which the state bears responsibility for protecting and preserving for the public's benefit, and for future generations. This new proposal does just the opposite. In essence, the state will permanently give away its rights to the Oxbow Springs water for the benefit of a private corporation. Making matters worse, the OWRD's review process for this approach does not require any consideration of whether the proposal is in the public interest. The new proposal has the potential for setting a dangerous precedent of trading away a state-owned public trust resource for the benefit of private corporate profit. The risk is real, as evidenced by Nestlé's recent actions in California, where the company has stated it would increase water bottling, if it could, despite the dire drought in that state. For now, Crag clients and other Nestlé opponents anxiously await OWRD's preliminary decision on the new proposal.



Oxbow Springs are the publicly held spring that Nestlé wants to tap for bottled water.

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*Underwater view of Grizzly Bear
This photo by Paul Souders will be featured at the
Wild Shots Auction on October 24th.*

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