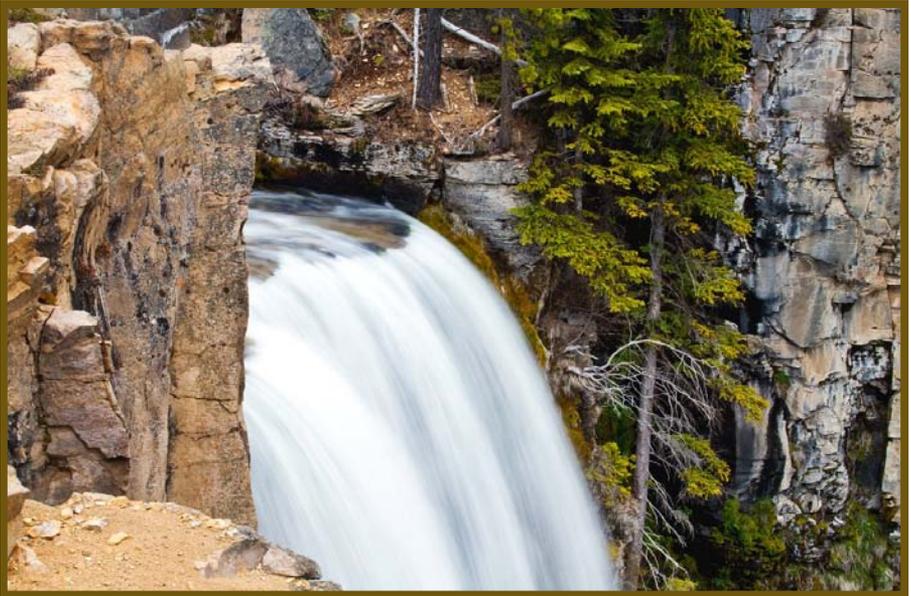




A View of the Summit

C R A G

Spring 2015 Newsletter



Troubled Waters

Water: Worth Fighting For

By Oliver Stiefel, Associate Attorney

**When you drink the water, remember the spring.
– Chinese Proverb**

In the Pacific Northwest, our story is told by water. Our past, present, and future are woven together by stream networks, which, as the Earth's veins and arteries, pulse life from the top of Mt. Hood, down through the Columbia River, and to the sea. We treasure our clean, cold water for drinking, fishing, paddling, and swimming. Healthy aquatic habitat in our forests supports a complex web of biodiversity, while seasonal flows in our high desert provide the lifeblood of that ecosystem. Our very existence—and that of every creature on the planet—depends on this sustaining life force. To borrow from David James Duncan, “there is fire in water. There is a flame, hidden in water, that gives not heat, but life.”

This issue of A View of the Summit tells of Crag's work to preserve clean, cold water—for people, for critters, and for a sustainable future. As our population grows, we will come to depend even more heavily on sources of fresh water. And with climate change impacting natural processes in erratic ways, our biological community will surely feel the effects: lower snowpack, altered runoff patterns, and less predictable flows. It may well be that in the once-soggy Pacific Northwest, the old adage of the West comes to pass: whiskey is for drinking, and water for fighting. Though I say that tongue in cheek, we can be certain that if we're not careful to safeguard this essential resource now, our mistakes will ripple long into the future.

And yet healthy waterways face persistent threats. The Forest Service and BLM continue to allow logging within areas that are supposed to be protected as streamside buffers, while the State of Oregon still permits the aerial application herbicides that end up in our drinking water. At the same time, the National Marine Fisheries Service continues to authorize the killing of imperiled steelhead and salmon, ignoring the additive impacts

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

of dozens of smaller projects. We are still fighting to protect public water from privatization in the Gorge, while challenging development proposals along Wild and Scenic rivers.

Indeed, most of our cases have a significant nexus to water. Our clients bravely stand up to forces that seek to pollute rivers, dewater streams, and jeopardize the health of aquatic ecosystems. In turn, we work to protect water quality, improve water quantity, and preserve healthy habitat for aquatic species and water recreation enthusiasts.

In this issue you will find stories about water, one of the universe’s most precious resources. You’ll learn about Crag’s work to combat industrial stormwater pollution and to ensure scientific integrity in a process to evaluate the water-quality impacts of a proposed pipeline that would crisscross southern Oregon watersheds. We share our thoughts on retooling the Oregon Forest Practices Act to guarantee that harmful herbicides stay out of streams that provide drinking water and habitat for imperiled salmon. You’ll also learn about a new climate change report detailing alarming threats for a cherished central Oregon stream. Lastly, we’ll introduce you to a scientist who has dedicated his career to protecting the aquatic ecosystems upon which we all rely.

We hope these stories inspire. In our daily lives, let us never take for granted pure, nourishing water—the flame that gives life—so we can ensure that whiskey stays for drinking!



West Coast Trail, Vancouver Island. Photo by Oliver Stiefel.

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Jordan Cove LNG: Heating Up in Southern Oregon

by Courtney Johnson, Staff Attorney

Over the past six months, we've been busy reviewing plans for Jordan Cove's proposed natural gas export facility at Coos Bay and 232-mile Pacific Connector pipeline across southwest Oregon. The 36-inch pipeline would require a 95-foot wide clearcut right-of-way across fire-prone forests and private lands in southwest Oregon to carry fracked natural gas from the interior west and Canada to the proposed export terminal for shipment to Asian markets. The terminal location on the North Spit of Coos Bay is one of the most dangerous earthquake and tsunami zones in North America.

The project is likely to change the face of Oregon for generations to come. For example, the Jordan Cove terminal and related facilities would be a significant source of greenhouse gases that contribute to climate change. In all, the facilities would emit more than 30 million tons of carbon dioxide equivalent per year into the atmosphere, including emissions from the power plant, leakage from fracking sites, and the burning of the gas at the final destinations in Asia.

In addition to these climate impacts, there are major concerns regarding the water quality impacts from the project. More than 38 acres of estuary and wetlands would be impacted at the terminal site. Dredging in Coos Bay for the marine terminal would require the removal of 360,000 cubic yards of sediment during the first 10 years of operations, and nearly that over the next decade. The proposed pipeline route would impact nearly 400 water bodies, including the Klamath, Rogue, Umpqua, Coquille and Coos Rivers, and threaten the continued viability of wildlife species such as salmon, northern spotted owls, and marbled murrelets.

With the project crossing so many waterways across such a large area, a primary concern is how to accurately quantify the individual and cumulative effects on water quality. As noted by the Environmental Protection Agency, even though the pipeline is linear, some watersheds would be crossed more extensively than others. Both the South Umpqua and the Upper Rogue would be heavily impacted. Many waterways in these basins

are already polluted or degraded by metals, sediment, temperature, and other pollutants, and as a result are not meeting water quality standards. The question that has to be answered is this: How will the water quality in these waterways be protected during construction and operation of the pipeline? For example, how will the project impact water temperature in the streams that are crossed? Fish rely on cold water, and Oregon law prohibits stream warming in order to protect fish habitat and associated beneficial uses like fishing. We know that the pipeline route will remain cleared of vegetation over the life of the project. That means that at every stream crossing there will be a loss of riparian vegetation. Streamside vegetation is critical to helping keep water cold, especially during summer months, which protects the fish and aquatic species that rely on cold clear streams to breed, feed, and survive.



The Pacific Connector pipeline would negatively impact nearly 400 Oregon waterways and wetlands, including the North Umpqua River, pictured above - photo courtesy of BLM.

As part of a large coalition of impacted landowners and conservation organizations, Crag has taken a lead role in evaluating water quality impacts and communicating the public’s concerns to the agencies responsible for protecting water quality and aquatic habitat. The process is ongoing, so stay tuned for future updates on the project. We hope that together we can continue to enforce water quality protections in our state and protect the beneficial uses of the waterways upon which we all rely.

Pesticides, Public Health, and the Oregon Forest Practices Act – A Legal Dinosaur

by Chris Winter, Co-Executive Director

The Coast Range is a special place for many Oregonians, where heavily forested watersheds provide clean water for local communities and native runs of wild salmon and steelhead. Many people live in these rural areas because they are drawn to the natural beauty and choose to raise their families in a safe environment far from the noise and pollution of the city. In the last several years, however, the hopes and dreams of many families have been trampled by the timber industry, soaked in a cloud of pesticides broadcast from helicopters flying over their homes and communities. While it might sound hard to believe, the stories are true.

A well-publicized incident in Curry County on the southern Oregon coast has raised public awareness about the issue. Just outside of Gold Beach, scores of local citizens were sprayed by Steve Owens of Pacific Air Research, who was under contract to spray the private forestlands of Crook Timberlands, LLC. Dozens of people experienced serious medical problems, pets died, and farm animals got sick. The Oregon Department of Agriculture was far too slow to investigate the incident and to get information to the public on the chemicals that were sprayed on their homes and properties. After a long-delayed investigation, Owens and PAR were each fined \$10,000. But those fines were appealed, and Owens to this day is still taking contracts to spray pesticides from his helicopter. Recently, citizens from Glendale, Oregon complained that they, too, were sprayed by Owens.

Partnering with Beyond Toxics, Crag has worked to educate the community on why these incidents keep happening and what can be done to better protect public health and clean water from these outdated practices. These are not isolated incidents. They occur all too often, the result of outdated laws and regulations, often times passed at the behest of the timber industry and its well-heeled lobbyists. Rural communities in Oregon are living under a cloud of uncertainty left over from earlier days in which the timber industry dominated Oregon politics.

Oregon is long overdue for reasonable, common-sense regulations that protect public health and clean water from outdated practices like aerial spraying of pesticides in steep forested terrain that provides habitat to threatened and endangered salmon.

The most fundamental problem is the Oregon Forest Practices Act, which is severely outdated. Neighboring states like Washington, California, and Idaho have all implemented no-spray buffers around schools, homes, and drinking water sources. Oregon, on the other hand, has no protective buffers around drinking water sources or homes and communities. As a result, people get sprayed on their private property and are then left at the mercy of the Oregon Department of Agriculture, which views the timber industry as its “constituents.”



After poisoning scores of local citizens, Steve Owens continues to take contracts to spray pesticides from his helicopter. Photo courtesy of Dean Reynolds.

Recently, Senator Michael Dembrow and Representative Ann Lininger sponsored Senate Bill 613, which would direct the Oregon Department of Forestry to implement improved buffers and would ensure better access to information for rural Oregonians. While the fate of the bill is uncertain, it is a step in the right direction. But more work is needed. The demographics and economics of Oregon have changed and will continue to change. The timber industry is trying desperately to hold onto power despite an avalanche of contrary scientific data and public opinions. The OFPA is an outdated relic – a legal dinosaur – and Oregonians deserve far better for public health, clean water, and our natural legacy.

When it Rains, it Pours: Combating Stormwater Pollution

by Maura Fahey, Associate Attorney

As Pacific Northwesterners, we have all grown accustomed to the steady stream of rain during the winter and spring seasons. Some of us may even be missing the usual damp conditions in this unseasonably dry year; I know I am! Steady rains mean the waterfalls are pumping, the forests are green, and there is snow on the mountains (hopefully). But once the rain hits the ground it needs somewhere to go. In heavily developed areas like Portland, our rivers and streams bear the burden of the wet weather aftermath known as stormwater.



Stormwater outfall.

Photo courtesy of USGS.

In undeveloped areas, stormwater naturally filters through the ground. But in areas of heavy development with impervious surfaces like roads, parking lots, and facility yards, stormwater runs straight to the nearest waterway, taking any debris and particles in its path along for the ride. Pollution from stormwater can have serious adverse impacts on the health of our rivers and streams. Urban stormwater can carry sediment, oil, chemicals, bacteria, and trash into our rivers causing harm to the plants, fish, wildlife, and humans that depend on clean water.

Crag recently represented Columbia Riverkeeper in two Clean Water Act enforcement actions to clean up toxic industrial stormwater pollution that runs into the Columbia Slough in north Portland. The Clean Water Act requires industrial landowners to monitor and reduce common industrial pollutants such as iron, phosphorus, zinc, lead, and E. coli bacteria, among others. When industrial pollutants reach certain levels, owners are required to assess the sources of those pollutants and take corrective action to reduce those levels. However, this is a requirement that often goes overlooked by industrial owners and the agencies responsible for enforcement.

Through the enforcement actions brought on behalf of Columbia Riverkeeper, Crag was able to secure meaningful action to help reduce

and mitigate industrial stormwater pollution in the Columbia River. Two industrial facilities along the Columbia Slough are now required to implement more rigorous monitoring and treatment methods aimed at reducing toxic pollutants from their industrial activities. In addition, the polluters will contribute a total of \$70,000 for projects to protect clean water in the Columbia River.

Citizen enforcement actions under the Clean Water Act allow organizations like Columbia Riverkeeper to keep polluters in check where regulating agencies often lack the resources to effectively police stormwater pollution. Crag hopes to continue this stormwater enforcement work so we can rest assured that when it rains in Portland, the pollution isn't pouring into the Columbia.

Save the Date!

WILD SHOTS

SATURDAY, OCTOBER 24TH, 2015

AT THE BENSON HOTEL



A BENEFIT AUCTION FOR CRAG LAW CENTER

TINYURL.COM/WILDSHOTS2015

Expert Profile: Jon Rhodes

by Oliver Stiefel, Associate Attorney

Jon Rhodes is a conservation hydrologist. Never heard of one of those before? Well, that's because there aren't too many consulting hydrologists who have dedicated their careers to serving the public interest. Quite simply, there aren't too many people like Jon Rhodes.

A trained forest hydrologist, Jon is the principal at Planeto Azul Hydrology, where he has provided below-market rate services on a wide array of projects affecting aquatic ecosystems since 2001. Planeto Azul's work is "solely aimed at fully protecting and restoring watersheds and aquatic resources, because to do otherwise is theft from future generations." Before founding Planeto Azul, Jon worked as the Senior Fishery Scientist-Hydrologist for the Columbia River Inter-Tribal Fish Commission. For more than 30 years, he has provided scientific expertise to more than 40 non-profits, 10 law centers, and tribal and county governments throughout the West on the impacts of public land management on aquatic ecosystems.

Jon has worked with Crag to provide technical expertise on a multitude of cases. As Jon puts it, he's "worked closely with and for Crag almost since it began and even before it had an office." He first worked with Chris Winter in 2002 on a case that successfully prevented logging and road damage to a watershed providing critical habitat for bull trout, a species protected under the Endangered Species Act. Since then he's continued to work with Crag attorneys on cases throughout the Pacific Northwest aimed at thwarting damage to watersheds, water quality, and fish habitat. In all of these cases, Jon provided help to Crag and its clients at highly reduced rates.

"Crag does its absolute best to provide world-class legal expertise to efforts to protect what little is left on behalf of its clients. They take on extremely worthy challenges for great clients on important issues. I'm thrilled to help Crag when I can. Others should, too."

I've had the privilege of getting to know Jon on a series of field reviews on Mt. Hood. For the past several years, Jon has been supporting Crag's work by preparing expert reports on the impacts of a proposed mountain biking facility at Timberline Lodge. We've hiked through watersheds already heavily impacted by years of ski area development and surveyed failed mitigation efforts on these fragile subalpine watersheds. And we always have trouble keeping conversations about baseball to a minimum! As an attorney, it has been a unique privilege to spend time with a scientist, learning about soil types, stream classifications, and fish habitat. The science is what drives



Conservation hydrologist Jon Rhodes and daughter Harper.

Crag's work, and having an expert like Jon Rhodes on our side is a huge part of why Crag has been so successful over the years.

In his spare time, Jon coaches his daughter Harper's basketball team. He's skied and hiked throughout the West, as well as in Spain, Poland, western Canada, Mexico, and Costa Rica, and makes annual pilgrimages for family and solo hiking in the Sierra, Colorado Plateau, Great Basin, and the Mohave. He lives with his wife Chena and daughter Harper in Portland.

A self-proclaimed "desert rat," Jon became fascinated by water at young age—as desert people have for millennia. As he recounts, "this helped engender a realization early in my academic career that liquid water, one of the solar system's most precious compounds for life, was largely being wasted and fouled at the expense of society and ecosystems." As a result, he has dedicated himself to doing all he can to protect and restore rivers and the watersheds that are crucial to their health. We're lucky he did.

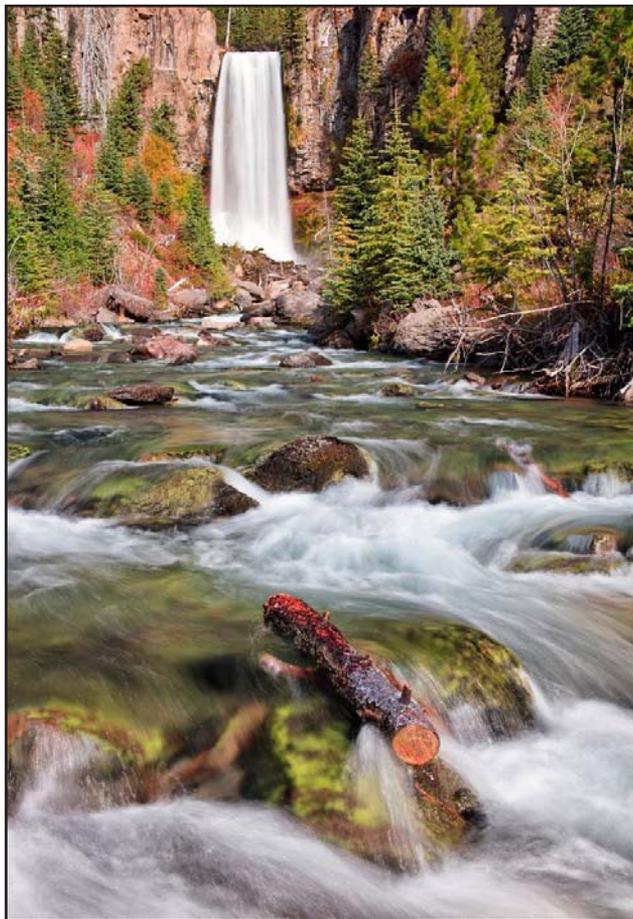
Climate Change Could Limit the City of Bend's Use of Tumalo Creek

by Ralph Bloemers, Co-Executive Director

The preliminary findings of new climate change research show that within the next 20-25 years, there could be a significant reduction in flows in upper Tumalo Creek during the dry summer and fall months. The City of Bend currently diverts surface water on Forest Service land upstream of scenic Tumalo Falls. Bend also relies on a stable supply of groundwater to meet municipal needs. The preliminary climate research indicates that in future summer and fall months, there could be no water flowing over Tumalo Falls if Bend continues its surface water diversion. In other words, the warming atmosphere and decrease in snowpack is highly likely to reduce available surface water.

Crag represents Central Oregon LandWatch and WaterWatch of Oregon in an effort to protect Tumalo Creek from reduced flows due to the City of Bend's investment in a major project to continue diverting water from Tumalo Creek, the Surface Water Improvement Project (SWIP). When it issued a permit to the City of Bend for the SWIP, the Forest Service refused to do a quantitative climate change analysis on Tumalo Creek; instead, it only offered up general statements about the risks. In response, LandWatch has hired hydrology experts to do the research and analysis that the Forest Service did not. The final report is expected this spring.

While the preliminary results of the analysis show the long-term impacts of climate change on Oregon's water resources, we're already feeling the effects of climate change. Scientists say this year's warmer weather and reduced snowpack are a precursor of what's to come, including water shortage problems, drought, and more frequent wildfires. "The City of Bend is spending \$70M on infrastructure that could quickly become obsolete as a result of climate change. At the very least, this expenditure is risky and oversized for the likely available summer/fall water in the coming years," said Paul Dewey, Executive Director of Central Oregon



Tumalo Falls. Photo Courtesy of Stu Gordon.

LandWatch. “We cannot afford to risk our precious public resources on a project that is likely to become unproductive.”

“Climate change poses extreme risks to our surface water supply. This new research reinforces the urgency to protect our water and wildlife from its effects,” added Dewey. “By protecting our irreplaceable natural resources like Tumalo Creek, we are also protecting the quality of life for future generations of Central Oregonians.” On behalf of LandWatch and WaterWatch, Crag filed an appeal in February with the Ninth Circuit Court of Appeals seeking to enforce the safeguards for Tumalo Creek’s instream flows and fisheries.

Where are They Now?

Scott Hilgenberg

by Erin Elliott, DukeEngage Volunteer



Former summer associate Scott Hilgenberg

In August 2014, we interviewed Scott Hilgenberg, who interned with Crag during the summer of 2011.

Scott first heard of Crag through his work with the Northwest Environmental Defense Center at Lewis and Clark Law School. In the summer of his first year of law school, Scott joined the Crag team as a summer associate.

“Crag Law Center instilled in me a belief that with hard work, dedication, and the right clients, environmental policies behind federal and state laws can be upheld. I was continually impressed with the attorneys’ abilities to choose compelling cases, and represent communities’ interests with unwavering support.”

Scott learned from his time at Crag that representing non-profit environmental organizations requires no small amount of dedication and enthusiasm. Through his experience at Crag, he learned to take a big picture view – seeing that it’s not always the outcome of a case that matters most, but the direction of the environmental movement. Scott also learned how to do legal research for eight hours and still be excited and energized to come back and do it again the next day – just because of the possible outcome of further protecting the environment.

During the remainder of his time in law school, Scott interned with Lewis and Clark’s International Environmental Law Project, Oregon’s Land Use Board of Appeals, and Earthrise Law Center, where he worked mostly on Clean Water Act litigation. Following law school, Scott moved

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to Olympia and began working with the Washington State Department of Natural Resources as an Aquatics Land Manager. In September of 2014, Scott took a position as Staff Attorney at the Oregon Land Use Board of Appeals in Salem.

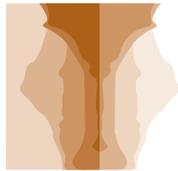
Scott is a strong proponent of renewable energy, and encourages individuals to contact their local, state, and federal representatives to push for stronger renewable policies. He believes that to combat our changing climate, policymakers need to look to all sectors for solutions to reduce emissions, and that this can only be done with extensive planning and the help of active, educated citizens.

Erin Elliott is a junior at Duke University. She volunteered with Crag in the summer of 2014 as part of the DukeEngage Portland program. She is majoring in biology with a minor in environmental science and policy.

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