A View of the Summit

CRAG

SUMMER 2017 NEWSLETTER

Emerging Leaders
Summer is a special time a Crag. The office is buzzing with energy. With the arrival of our summer associates and interns, we nearly double in staff size. The enthusiasm these volunteers bring into our organization is palpable. Seeing our work through another’s eyes brings us fresh perspectives, and working with our interns really drives home how much we all love the work that we do. From legal research to revamping our website, Crag benefits immensely from the skills and dedication that these volunteers bring to our organization. It is our hope that we, in turn, help these incredible people on their paths to becoming effective environmental advocates.

This issue of *A View from the Summit* features the writing of our 2017 summer volunteers, which include four summer associates, an undergraduate student and and a high school student. In this edition, our volunteers share Crag’s stories and offer their unique perspectives on how they personally relate to our work.

Following a career as a biologist, Jennifer Calkins now studies law at the University of Washington. She writes about Crag’s involvement in the federal youth climate case, which has been hailed as the “trial of the century.”

A law student at Notre Dame, Ka’sha Bernard reflects on the ongoing fight in the Columbia Gorge to protect Oregon’s public spring water from being bottled and sold by Nestlé.

Mark Tuai is a law student at Lewis & Clark and was referred to Crag by our clients The Native Fish Society. Mark writes about Crag’s work to protect the threatened Oregon Coast coho salmon.

Rachel Meche is a student at Vermont Law School and an advocate for sustainable water practices. She writes about Crag’s ongoing work to ensure that wildlife habitat, rather than leaseland agriculture, is given priority in the Klamath National Wildlife Refuges.
Elizabeth Allen, a rising college sophomore, joined us through the DukeEngage program. She addresses the destructive impacts of off-road vehicles to natural areas and the value of preserving such places for quiet recreation and wildlife.

This summer we also had a high school student volunteer with us. David Edelman, a student at Catlin Gabel School, reflects on his time volunteering with staff attorney Ralph Bloemers.

I hope you enjoy hearing from the volunteers who put their hearts and souls into working at Crag this summer. Our office feels eerily quiet now that they are gone. We are happy to share their stories with you and excited to see what they do next. Stay tuned to our blog “Where Are They Now,” to keep up with the amazing work our past volunteers are up to now.
I am a field biologist at heart. My joy comes from watching another species, a female California quail perhaps, going about its business. I was a biologist in practice until three years ago when I began to study law. Through my work as a biologist, I came to see that we are facing a triage situation. Our environment and those reliant upon it, from that female quail to the common murres starving along the Oregon coast, are under threat from climate change. Perhaps that quail and her brethren will weather the change, but I decided I needed to stop watching her and start working to protect us all.

I am lucky in my internship experiences. This summer, I am working at Crag, a group both tenacious and sophisticated in protecting the environment. Crag supports Our Children’s Trust, the similarly stalwart group that I clerked with last summer. While Crag tackles a range of environmental issues, Our Children’s Trust is purely focused on climate change and the need to bring global mean carbon emissions down to 350 ppm. Our Children’s Trust works towards this goal through actions at all levels of government, from the municipal to the international. Their current most visible case is the suit against the U.S. government.

Called “the biggest trial of the century” by the Washington Post, the suit pits 21 youth plaintiffs in a fight against the U.S. Government, including President Trump, for a livable climate. These youth, each one personally affected by climate change, are suing to halt the government’s ongoing violation of their constitutional right to habitable climate. Kelsey Juliana, Crag’s client in the Oregon youth climate case, is one of the 21 youth named in the suit. Crag recently got involved in the federal case representing the League of Women Voters of the United States and the League of Women Voters of Oregon as amici (“friends of the court”).

The Leagues joined the case because of its alignment with their consensus advocacy position on natural resources: “protection and management of natural resources [as] responsibilities shared by all levels of government.” They have already impacted the case. Their amicus curiae brief during pre-
Youth plaintiff Kelsey Juliana speaks during a press conference on the sidewalk in front of the U.S. Supreme Court. The youth with her are part of 21 plaintiffs in the federal lawsuit. Photo by Robin Loznak.

trial proceedings helped block the defendants’ attempt to kick the case out of court and ensured that these 21 plaintiffs would have their day in court.

At the same time, fossil fuel industry groups withdrew from the case, demonstrating their fear of the revelations a trial would reveal and their confidence in the current administration’s pro-fossil-fuel stance. The case continues to move rapidly so check the Crag and Our Children’s Trust websites for updates: crag.org and ourchildrenstrust.org.

In a time when our federal government is disinclined to protect its own citizens, the world watches to find out whether our Constitution and our federal courts will protect our right to life free from catastrophic effects of climate change. In working on this case with both Crag and Our Children’s Trust, I’ve learned to be an advocate for the environment by speaking from the heart. While the law may seem a dispassionate structure, it is actually a framework where the passion I developed as a field biologist can be a voice for saving what I know is necessary and important.

Jennifer Calkins is a third year law student at the University of Washington School of Law. She is also a Ph.D. biologist and formerly taught and conducted field and genomic research at the University of Washington and The Evergreen State College.
keeping nestlé out of the gorge
by ka’sha bernard, notre dame law school

my 11th grade earth science teacher periodically showed us documentaries in class concerning both the earth and science. that may have been the easiest class i had in high school. one day in particular, we watched tapped, a documentary exposing the financial and ecological impacts of the bottled water industry. as an impressionable teenager, i was disgusted at the practices that were exposed to me, but what could i do to change anything at that age other than use a reusable water bottle? after finding crag and seeing their work on the nestlé issue, i knew this was my chance to do something more than tote my collection of reusable water bottles around.

less than 24 hours from my first ever arrival in portland, oregon, i was whisked away to the columbia river gorge. camera phone in hand, i gazed in amazement at the beauty of the pacific northwest as we traveled to the city of cascade locks. after traveling through the city and learning a little bit about the bridge of the gods, i found myself at the oxbow springs hatchery, where we would find the intended water source for nestlé’s proposed water bottling facility. “it’s just water coming out of a concrete box,” another intern observed. while working on this nestlé issue, i would soon learn that this is about more than just “water coming out of a concrete box.” this is about potentially 100 million gallons of water being taken by nestlé every year from oxbow springs. water is an essential element of the environment, and it is threatened to be taken, bottled, and shipped away for corporate profit.

summer associates (l to r) mark tuai, ka’sha bernard and rachel meche got an on-the-ground introduction to crag’s work with a field trip to oxbow springs, the publically owned spring at the center of the nestlé case.
In September 2015, Hood River County residents filed a ballot petition for the Hood River County Water Protection Measure with the goal of ensuring a long-term water supply for the county’s families, farms and fish. The Measure prohibits commercial water bottling from any water source in the county, as well as the transportation of commercially produced bottled water in any way when such water was collected from any source in the county. By May 2016, Measure 14-55 was put to a vote in order to protect the water in Hood River County from large scale bottling corporations. The ballot initiative passed with 68% of residents voting “yes.” The battle against Nestlé’s proposal to bottle the water in Oxbow Springs had been ongoing for years, and this was a large victory for our shared water resources. However, the voters of the City of Cascade Locks were not as supportive of the Measure. While 68 percent of Hood River County voters supported the bottling ban, only 42 percent in the Cascade Locks precinct did.

It looks as though the City of Cascade Locks will challenge the Measure. Nestlé has reportedly put $100,000 into fighting the ballot measure. Crag, representing Local Water Alliance, has partnered with Patagonia Portland to build awareness of this critical issue with a mural that spans three windows of their downtown store. The mural will be up from July to November, so make sure to stop by and see it! Inside the store, there is an “Enviro” set up, where they will be showing the Tapped documentary, and on November 9th, Patagonia will host an in-store event to raise funds to continue the fight against water bottling in Cascade Locks.

Ka’sha Bernard is a third year law student at the University of Notre Dame, originally from New Orleans, Louisiana.
If you strike up a conversation with almost any deckhand or fishing guide on the Oregon Coast this year, you’re likely to get the same two cents: fishing for coho salmon has been slow. While Oregon Coast coho salmon (OC coho salmon) have rebounded from their historically low numbers in the 1990s, they still remain listed as “threatened” under the Endangered Species Act (ESA) and face the threat of extinction. In 2015, native spawners were numbered to be at 57,000. Compare this to historical runs, which were estimated between 1 and 2 million, and you get the point, OC coho salmon are in trouble and need our help.

Crag is at the forefront of the fight to secure greater protections for OC coho salmon. For years, we have fought to ensure that OC coho salmon remain part of Oregon’s natural heritage. This has meant developing partnerships and working with local stakeholders to ensure that state and private actors are doing their part to help conserve OC coho salmon. In many cases, our work involves taking State and private actors to court when they fail to comply with the ESA.

Currently, Crag is fighting to ensure that the State of Oregon fulfills its legal responsibility to OC coho salmon. The State has failed to comply with the requirements of the ESA, which prohibits the “take” (which means to cause death, injury, or harm) of threatened species like OC coho salmon. Specifically, the Oregon Department of Forestry has chosen to pursue timber sales at the risk of taking OC coho salmon. Inadequate riparian buffers and steep slope logging in Oregon’s State Forests have resulted in lethal water temperatures and suffocating sediment in coho bearing streams. At the same time, Oregon has refused to develop a legally required plan for minimizing the impact of its forestry practices, known as a “Habitat Conservation Plan.”

Habitat Conservation Plans play an important role in helping to ensure the conservation and survival of listed species. A plan outlines the impact that will result from taking the species, the steps the actor will take to mitigate and minimize take, the alternatives available, and any other measures that are necessary.
Crag and its partners have worked with Oregon to bring the State into compliance with the ESA. Despite these efforts, Oregon is still not in compliance, because it has failed to prepare a Habitat Conservation Plan. This failure by the State has allowed fish bearing streams to remain degraded, which poses significant threats to juvenile coho salmon. Juvenile coho salmon are often without adequate rearing habitat and subject to greater rates of predation. Crag will continue its fight to ensure that OC coho salmon are afforded the full protections of the ESA, which they rightfully deserve.

Mark Tuai is a student at Lewis & Clark Law School with a passion for fly fishing and protecting wildlife and wild places.

tickets & more info: crag.org/wildshots
The Klamath Basin National Wildlife Refuge Complex is one of the world's most important waterfowl habitats, spanning across 200,000 acres of shallow lakes, wetlands, and grasslands. Over 260 species of birds have been observed in the Klamath Basin, and approximately 80 percent of the Pacific Flyway waterfowl stopover within the Basin’s wetlands, seeking food, shelter, and nesting grounds along their migration. Every fall and spring, visitors from around the world come to watch millions of birds take flight from the wetlands and lakes.

Sadly, in 1905 the United States Bureau of Reclamation began a project to “reclaim”—i.e., drain and develop—the Basin’s wetlands to provide land and water for irrigated commercial agriculture in the Basin and high desert; today, less than 25 percent of historic wetlands remain. In an effort to conserve remaining habitat for wildlife and waterfowl, over the years, the surviving wetlands were designated as six “national wildlife refuges.” Currently, the Klamath Refuges support the last three remaining white pelican breeding colonies in the West and provide critical habitat to the largest bald eagle population in the interior United States.

Despite the refuge designation, under current management by the United States Fish & Wildlife Service (the Service), lands within two of the Klamath Refuges are still leased for commercial agriculture. Common crops like potatoes and alfalfa provide little to no nutritional value for waterfowl and use up the limited precious water supplies. As a result, the wetlands have been depleted and polluted, leaving fish and waterfowl habitats in critical condition. Dry, cracked mud flats have replaced the thousands of acres of

“All are linked, perhaps fatefully, by a shared water supply, and all are affected by the fact that they lie like small islands in a great sea of surrounding farmlands—land reclaimed by drainage and stream diversion from an original waterfowl paradise of marshland and open water.” – Rachel Carson prophetically writing in Silent Spring about the threats facing the national wildlife refuges in the Klamath Basin in 1963.

The Fight to Restore the Klamath National Wildlife Refuges

by Rachel Meche, Vermont Law School
water that once glistened across the Basin. The shrinking wetlands have led waterfowl to overcrowd in the limited space, resulting in an increase in avian disease. The lack of clean water has dramatically decreased the waterfowl and fish populations.

Currently, we are representing Audubon Society of Portland, Oregon Wild, and WaterWatch of Oregon in a challenge to the Service’s Comprehensive Conservation Plan and Environmental Impact Statement (the Plan) for five of the six refuges in the Klamath Basin: Upper Klamath Refuge, Tule Lake Refuge, Lower Klamath Refuge, Clear Lake Refuge, and Bear Valley Refuge.

Every 15 years, the Service is charged with developing a management plan that meets these refuges’ purposes—protection of wetland habitat that can once again support a spectacular migration of birds and provide habitat for other wildlife. Unfortunately, the Plan falls far short of meeting the needs of the wildlife and waterfowl that depend on the Refuges. The Plan fails to adequately address the fundamental underlying issues threatening the Refuges’ habitat—the leaseland farming program and limited water supplies. Our clients are seeking a court order requiring the Service to address these threats and comply with its legal obligations to protect waterfowl and wildlife alike.

Rachel Meche is a third year student at Vermont Law School and advocate for sustainable water practices.
I have been hiking in the woods behind my home ever since I was a kid. And ever since I was a kid, there have been off-road vehicles (ORVs) crisscrossing into creeks and over hills to create their own routes through the trees. They’ve created miles of muddy tracks that disrupt the untouched land that once existed. These Maryland woods near my home are not specifically protected, and no one manages them to prevent adverse impacts from ORVs. For now, these ORVs will continue to roam through the woods freely.

Based on my experiences with ORVs at home, when I interned at Crag, I was not surprised to learn that other people create routes through the woods in other places. However, I was surprised to learn that those “other people” include the United States Forest Service and those “other places” include the Ochoco National Forest, which features old-growth forests, irreplaceable shrub-steppe habitat, and sensitive watersheds. The Forest Service recently approved a 137-mile ORV trail system in the Ochocos that will involve about 50 miles of new construction and about 40 new stream crossings in an area that already has 700 miles of unauthorized ORV routes.

If this trail system is created, elk that have already been forced out of much of the Ochocos due to previous habitat fragmentation would be pushed further to the borders of the forest and even onto private lands. In addition, riparian vegetation would be damaged and water quality would decrease in one of the last strongholds for Redband trout in the Ochocos. Crag Legal Fellow Emma Bruden emphasizes that, “We’re really at a critical point in the Ochoco National Forest where if we don’t do something about it now, we’re going to have irreparable harm to the wildlife and to the forest.”
A diverse group of stakeholders oppose the ORV project including hunters, conservationists, local citizens, and the Oregon Department of Fish and Wildlife. Recognizing that the additional routes would cause irreversible damage, they have submitted a record number of administrative “objections” to the Forest Service. Yet the project continues.

Our client Central Oregon LandWatch knows that the new trail system would push the Ochocos to the brink of what it can handle, and asked Crag to represent them in federal court to challenge the project. In July, we filed a complaint on behalf of LandWatch, in support of a more balanced approach for the forest.

It seems to me that balanced use of the forest is essential. Of all the recreational users of the forest—hunters, fishermen, equestrians, hikers, berry pickers, and more—only about 3% are ORV riders that would use the new routes. The majority of people who enjoy recreating the Ochocos should have their voices heard. The voiceless wildlife should be considered.

These new routes would enable ORV riders to disrupt the habitats of a forest already on edge. I hope that the Forest Service protects the Ochocos instead. Here’s hoping that the Ochocos remain preserved for my generation and generations to come.

Elizabeth Allen is a rising sophomore at Duke University. Through the DukeEngage program, she worked as Crag’s development and communications intern this summer.
This summer, I helped Ralph with two cases. First was the Tumalo Creek case, challenging a water project by the City of Bend. After doing case research, I got to see an oral argument in front of the Ninth Circuit, which was definitely the highlight of my time here. The question-and-answer style of the judges is much more exciting than most legal proceedings.

The other case was a Measure 37 claim, which taught me a lot about Oregon’s land use system. I think this system is something special about Oregon that people like me too often take for granted, when in reality it took a ton of effort to create and protect over the years.

Although at first I was kind of nervous about being the only high school student at Crag, everyone was extremely welcoming, and in the end I learned lots about environmental law. It’s been a great six weeks!
Summer Interns & Associates
Elizabeth Allen (Duke University), Ka’sha Bernard (Notre Dame Law School), Jennifer Calkins (University of Washington Law School), David Edelman (Catlin Gabel School), Rachel Meche (Vermont Law School), Mark Tuai (Lewis & Clark Law School)

Foundation & Leadership Support (August 2016 - Present)

Special Thanks!

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