The Columbia River as viewed from Cape Horn.

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

**The Future of the Columbia River Gorge**

By Chris Winter, Co-Executive Director

Water is the foundation for life on Earth. Here in the Pacific Northwest, our rivers, glaciers and rainforests both sustain us and provide inspiration for our souls. People of all backgrounds know deep down in their heart the importance of protecting their local watersheds, which is especially true in our unique corner of the world.

Over the past year, our love of the clear, blue H2O brought Crag all the way to the U.S. Supreme Court. For decades the logging industry has polluted our rivers and streams, externalizing the costs of their operations onto the backs of salmon fishermen, local water districts and the public. The EPA and state agencies often look the other way despite a mountain of scientific evidence about the impacts of this pollution. With an outpouring of support from our friends and partners, we pursued a challenging and important issue all the way to the highest court in the land. Thank you to everyone who encouraged and supported us in this important work.

The Supreme Court issued an opinion in March, and while we did not win the case, there is most definitely a silver lining. Later in this edition of the Summit, we summarize the decision of the Supreme Court and offer a glimpse into what comes next.

In the rest of this issue, we focus on the mighty Columbia River. I recently enjoyed an incredible helicopter ride outside of Golden, British Columbia, where I saw the Columbia River flow north from its headwaters through the Selkirk Mountains until it makes a great arcing turn to the south. The snow that falls on those wild granitic peaks of Canada eventually melts and flows through the Columbia River Gorge, where it supports our iconic runs of Pacific salmon and a vibrant recreational economy.

The river links together millions of people over a vast swath of North America.

But our treasured Columbia River Gorge is under attack. Foreign companies want to export hundreds of millions of tons of coal—a dirty and outdated commodity—through the Gorge to Asian markets. Nestlé, with the support of the Oregon Department of Fish and Wildlife, is trying to privatize public water from the Gorge, selling it off in plastic bottles. And on the White Salmon River, following one of the largest and most successful dam removal projects in our history, developers want to subdivide local farmland, threatening a world famous white water river and a tributary to the Columbia.

Throughout the rest of this issue, we talk about our work to protect the Columbia River Gorge from these threats. But we could never do this work on our own. Our clients and partners pour their hearts and souls into leaving a legacy for future generations. And over the past year, all the support from our donors and friends has inspired and motivated us. We have many challenges to confront in order to preserve the incredible place we all call home, and we hope that you will continue to support us in that effort.

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The Astoria-Megler Bridge at the mouth of the Columbia River. Photo by Suzanne Savell.
Standing up to Nestlé in the Columbia Gorge

by Courtney Johnson, Staff Attorney

Last year, Crag joined forces with the Keep Nestle Out of the Gorge coalition to prevent the multi-national food conglomerate Nestlé from privatizing, bottling and selling Oregon’s public water.

Nestlé has plans to build a water bottling plant in the Columbia River Gorge using spring water from the Herman Creek watershed and municipal water from the City of Cascade Locks. The coalition has been working to shed light on the proposal and its potential impacts since 2010. Crag agreed to step in and help with legal challenges related to the water rights needed to carry out Nestlé’s proposal.

The spring water bottling operation would extract up to 150 million gallons of water per year from Oxbow Springs at the head of Little Herman Creek. Nestlé currently does not hold a water right to use the spring water it wants to bottle. The Oregon Department of Fish and Wildlife has rights to use water from Little Herman Creek for use at the Oxbow Fish Hatchery. The wildlife agency last year filed applications to add the Oxbow Springs to its water right, and then to exchange water with the City of Cascade Locks. The exchange would provide spring water to the city in exchange for well water for the hatchery. Cascade Locks would then sell the spring water to Nestle.

On behalf of Bark and Food & Water Watch, members of the broader coalition, Crag filed protests to the Oregon Water Resources Department’s initial decisions to approve the changes to the wildlife agency’s water rights. Water rights in Oregon are defined by the beneficial use of the water, the place of use, the water source, and the amount of water used. Crag argued that the spring water is not the same as the Little Herman Creek water source authorized in the wildlife agency’s water right, and argued that the desired change in source cannot be accomplished through the application filed by the wildlife agency. Crag questioned whether the change would ultimately injure other water users or result in the wildlife agency being able to use more water than is currently available to it.

Crag also challenged the validity of the water right, arguing that the wildlife agency’s applications show it has not used the full authorized amount of water from Little Herman Creek. As a result, the Water Resources Department initiated a proposed cancellation of the water right. The cancellation proceeding will determine whether the wildlife agency has forfeited a portion of its Little Herman Creek water right by failing to use the full amount of the water allowed. This issue must be resolved before the application to add Oxbow Springs to the water right can be decided.

Only after the springs have been added to the water right will the Department of Water Resources consider the application to exchange water between Oregon Department of Fish and Wildlife and the City of Cascade Locks. In the meantime, our clients have been putting pressure on the Governor and responsible agencies to carefully consider the impacts of bottling our public water in the Columbia Gorge. So far, without the rights to the water secured and without approval for construction of the water bottling plant, Nestle’s plans have not come to fruition. Stay tuned as this battle for the Gorge and our public water continues.
King Coal and the Columbia River Gorge

by Chris Winter, Co-Executive Director

Coal is king no more. With a growing scientific consensus on the causes and impacts of climate change and an aging fleet of coal-fired power plants, our nation is rapidly transitioning to newer and cleaner sources of energy. Last July the Energy Information Administration predicted that 17 percent of the capacity of our nation’s coal fired power plants would be retired between now and 2020 – in only eight years. And it’s about time. In addition to climate change, air pollution from coal power plants causes millions of deaths each year, coal ash pollutes countless watersheds, and toxic chemicals like mercury build up in our food chain.

As the American economy phases out its dependence on this outdated and dirty source of energy, the coal industry is looking for new markets to exploit. In an ironic twist, the coal industry has turned to the Pacific Northwest, ground zero in the country’s sustainability movement, as its conduit for the export of hundreds of millions of tons of coal. They hope to transport this coal through the Columbia River Gorge to Asian markets, where it would be burned in the power plants of developing economies. Adding insult to injury, this coal would be mined for pennies on the dollar from our public lands in the Rocky Mountains, and the pollution would then be exported back across the Pacific where it would end in our air and water. And, of course, all this coal would add more fuel to the ever-increasing fire of a warming climate and extreme weather events.

The Crag Law Center is working with a strong coalition of groups led by Columbia Riverkeeper, Climate Solutions, the Sierra Club and others to defend the Columbia River Gorge from king coal’s push to gain a foothold in Oregon. Ambre, a thinly financed company from Australia, has plans to ship coal by rail to the Port of Morrow, where it would be loaded on barges to St. Helens and then transferred to ocean going vessels destined for Asia. The deal is far from done, however, because the project requires permits from both the Army Corps of Engineers and the Oregon Department of State Lands. Our state leaders are responding to the local outcry about the potential impacts to Oregon and the Columbia River Gorge. Governor Kitzhaber has called on the federal government to conduct a thorough environmental impact statement before granting any permits for coal export terminals in the Pacific Northwest, and DSL has asked that Ambre provide accurate information on potential impact to salmon habitat, tribal fishing sites, and the resource of the Columbia River.

The next battle is shaping up to be Kinder Morgan’s plans for a coal export terminal at Port Westward in St. Helens. The coal trains and all the coal dust would roll right through Portland en route to the transfer facility on the Columbia River. In a telling move, PGE, which owns a coal fired power plant in Boardman, refused to sublease to Kinder Morgan land it uses for a gas fired power plant in St. Helens. PGE was concerned that coal dust would foul its operations, and PGE knows coal dust. So the Port is now attempting to find another way to site a coal transfer facility. Along with Columbia Riverkeeper, we’re on the case.

Check our web site and stay tuned for the latest updates on our work to preserve the incredible natural legacy of the Columbia River Gorge. King coal faces an uphill battle here in Oregon.
“I was born in the wrong place,” quipped Mitch Turker as he recalled his first trip to the Pacific Northwest to hike in the North Cascades. Today, Mitch is a cancer researcher and professor at Oregon Health & Science University and a dedicated Crag supporter.

He grew up on Long Island, New York, but despite its abundant beaches and proximity to the big city, Mitch knew something was missing from his life and it was not more asphalt. A friend suggested he go backpacking out west, and so at age 24 he set out for the North Cascades. Less than a year later Mitch was enrolled in a graduate program at University of Washington so he could further explore the Cascade Mountains while he continued his studies. He met his wife Lisa while he was in graduate school and went on to obtain a PhD in Pathology. Lisa obtained a medical degree from UW.

After obtaining his PhD, Mitch worked at Colorado Health Science University and the University of Kentucky, but he always had his eye open for a way to make it back to the Pacific Northwest. In 1996, he landed a position at OHSU and he still works there today.

Since then he has discovered new mountains to explore. While he is particularly fond of the Wallowas he also appreciates local hiking opportunities in

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The White Salmon River flows from the flanks of Mt. Adams south through orchards, forests and deep canyons to its confluence with the Columbia River. Local citizens worked for decades to protect the river under the Wild and Scenic Rivers Act and remove the 120-foot high Condit dam from its lower reach.

On October 26, 2012, hundreds of people gathered at the river to celebrate as explosives experts detonated a charge in the dam and drained the reservoir. In the months that followed, workers removed the concrete dam and restored the river’s banks through the careful placement of new vegetation. The newly freed river was opened to kayakers and rafters who found a challenging new section of whitewater punctuated by the Class IV Steelhead Falls, and to trout and salmon that now have free access to miles of habitat that the dam once blocked. A group of over 600 Fall Tule Chinook salmon were moved upstream before the dam was blown and since its removal scientists have observed those fish using the newly freed river.

By all accounts the dam removal has been a huge success so far. Despite these phenomenal accomplishments, local river advocates are working to protect the river from a new threat – sprawling residential development on over a thousand acres of prime farm and forestland in and around the river and its tributaries. Just as Condit dam was coming out, Klickitat County moved forward with a plan to drastically increase the allowed density of new homes along the river and its tributaries by up to ten times. What was once a largely rural landscape punctuated by the two rural centers of BZ Corner and Husum is now open for development of hundreds of homes sprawled out across the landscape within sight and sound of the Wild & Scenic White Salmon River. This level of uncoordinated development poses serious threat to the water flowing into the White Salmon from its tributaries, and in turn the fish, wildlife, and whitewater community that rely on a clear river.

That is, of course, unless the Friends of the White Salmon River and the Friends of the Columbia River Gorge stop the plan and force Klickitat County to comply with state laws designed to protect the environment.

In June of last year Crag filed suit on their behalf and in February of this year we presented plaintiffs’ case to Judge Barbara Johnson in the Clark County Superior Court. Right now, we have our fingers crossed as we wait patiently for a decision.
Over the last year or so, we have been working hard on the logging roads case, which was taken up by the Supreme Court in December of last year. On March 20, 2013, the Supreme Court issued a decision reversing the Ninth Circuit in Northwest Environmental Defense Center v. Brown. The Court held that Clean Water Act permits are not required for discharges of stormwater from pipes, ditches and channels along active logging roads.

While we are disappointed in the outcome, the Supreme Court decision is unlikely to be the final chapter of this story.

The case began back in 2006 after field reconnaissance in the Tillamook State Forest documented extremely high levels of pollution coming off of logging roads managed by the Oregon Department of Forestry. The rivers on the North Coast of Oregon support imperiled runs of the threatened Oregon coast coho, and the sediment being discharged from active logging operations fills in spawning beds, clogs gills and suppresses populations of macroinvertebrate prey for fish. Along with the Northwest Environmental Defense Center and the Washington Forest Law Center, we initiated an action against the ODF and several companies that purchased timber on state forestlands, alleging that they were in violation of the Clean Water Act.

The Clean Water Act generally requires a permit for any discharge of pollution from a “point source,” which includes any pipe, ditch or channel. For stormwater, however, only certain types of point source discharges require permits, including those “associated with industrial activity.”

The first issue at stake was whether logging roads could ever result in a discharge from a point source. Industry argued that its activities resulted in so-called “non point source” pollution akin to “natural runoff.” If the Court had ruled that pollution from logging roads was a “non point source,” then a Clean Water Act permit could never be required. The second issue at stake was whether the cutting and hauling of timber was an industrial activity.

The Supreme Court passed on the first issue. The Ninth Circuit had ruled that any pollution from a pipe, ditch or channel was a “point source,” and industry asked the Supreme Court to overturn that part of the Ninth Circuit’s decision. The Court refused to resolve that issue either way.

Instead, the Supreme Court deferred to EPA’s determination that discharges from logging roads were not “associated with industrial activity.” Justice Scalia dissented on this point, noting that EPA had long ago included logging on the list of regulated industries and questioning why a court would defer to an agency’s interpretation of its own regulation. Nevertheless, the outcome of the case is that EPA is not required to regulate logging roads as industrial activities.

The silver lining here is that the Supreme Court did not reverse the Ninth Circuit’s opinion on the issue of whether these are point sources in the first instance. The Supreme Court could have issued a much more sweeping decision, which is what the logging industry wanted, declaring their pollution to be non-point source natural runoff. Had the Court gone this route, it would have severely limited EPA’s discretion in whether and how to regulate logging activities. So long as the pipes, ditches and channels along logging roads are considered to be point sources—an issue that was not resolved either way by the Supreme Court—EPA has the authority under the Clean Water Act to require permits for these discharges or to find a better way to regulate them.

Thank you to everyone who supported us in this important work, and rest assured the work is not over. Before this case, industry steadfastly insisted that their logging road pollution was non-point source. That argument was dealt a serious blow by the Supreme Court, which now places the ball squarely in EPA’s court to determine how to regulate logging roads as point sources. We are already working hard to ensure that EPA enforces the law and upholds the public interest in water quality and aquatic habitat.
Portland including Tryon Creek State Park and Forest Park. And Lisa discovered the long ski season at Mt. Hood. Over the years, Mitch realized that the outdoor opportunities he enjoys are the result of tireless environmental advocacy by others and he felt compelled to get additional skills so he could do his part to help protect the special places that he loves.

In 2004 he enrolled in the four-year evening law program at Lewis and Clark Law School. He focused on environmental law and one of his favorite classes was Forest Law and Policy taught by Crag’s own Ralph Bloemers and Chris Winter. After he got his degree, Mitch offered to volunteer a day of his time a week while still working pretty much full-time as the head of a team of researchers at OHSU.

Ralph, of course, accepted the offer for help and Mitch began volunteering with Crag in 2008. He spent his time working on land use cases involving efforts to protect farm and forest lands from subdivision and development. Mitch left Portland in summer 2010 to do a yearlong science fellowship in Washington D.C. with the U.S. Department of State.

Mitch returned to Portland in 2011 to continue his important research work at OHSU. He and Lisa still enjoy hiking in the local forests, spending time on Mt. Hood and backpacking around the Cascades.

He recognizes that “these places have been preserved through a legacy of environmentalism, which Crag is working to perpetuate,” and that “when I donate to Crag, I know my time and money is going directly to help Crag make a difference.” Today, he is back at Crag volunteering his time and energy one day a week to help protect this special place he calls home.

Get Involved!
For more information about Wild Shots sponsorship, donation opportunities or volunteering for Crag, please contact Suzanne:
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