Diggin’ Up Trouble

artwork courtesy Harper’s Weekly

Panning on the Mokelumne

Crag Law Center  Fall 2010
A View of the Summit
Beyond ‘49ers: Mining in Oregon Today
by Courtney Johnson, Staff Attorney

From coastal and Cascade ranges shrouded in evergreens, to the fertile soils in the valleys, to the thousands of miles of coastline and the rich marine life it supports, the natural wealth of the Pacific Northwest is obvious to residents and visitors alike. For centuries humans have capitalized on these bounties through harvests of timber, fisheries, and agriculture. This summer a lesser-known natural resource industry—mining—has attracted public attention. Long standing concerns over in-stream gravel mining, worries of a new gold rush in Oregon, and a recently approved strip mine in Coos County have raised the profile of mining in the Northwest and captured the attention of those who seek to protect our natural resources for future generations.

In Oregon, coastal rivers have long been exploited for their rich gravel reserves. Removing gravel from streams can damage fish habitat and spawning grounds by increasing fine sediment and stream bank erosion, and disrupting natural channel formation in rivers. If improperly designed, areas where gravel has been removed can create flood hazards or cause significant changes to river channelization and flow during the rainy season. During high water, fish may use mined areas for refuge from fast-moving flows, but when water levels drop these pits become isolated from the main stream channel, trapping fish. For these reasons, in-stream gravel removal is prohibited in most of Canada and many European countries.

For the past two years, the Army Corps of Engineers has studied the movement and quantity of gravel of Oregon’s Chetco River to determine whether the river can sustain continued gravel mining operations. Crag Law Center and its partners have provided several rounds of public comment to the Army Corps as it develops a Regional General Permit for in-stream gravel mining operations in the Chetco river basin. This will likely be the first of several general permits developed for gravel mining operations, and Crag is working hard to ensure the permit addresses the impacts of this industry and protects important fish habitat.

Higher up in the watersheds, the tributaries and headwaters of coastal rivers contain an old-fashioned mineral reserve: gold. Under the 1872 Mining Law, anyone can stake a claim to mine on federal public land. Modern day gold miners find gold by suction dredging—vacuuming up sediment from the stream bed, sluicing out the gold, and dumping the remaining sediment back into the stream. California recognized the hazard these operations pose to fish and fish habitat, and this year the state implemented a moratorium on suction dredge mining so that the environmental effects of this method of gold mining can be studied. California’s moratorium is a sensible and cautious measure to protect important habitat, but it raises concern for many residents of southern Oregon who fear that the closure of streams for mining in California will drive miners north.

The debate over natural resource extraction often pits one resource against another. Mining is no exception. In this case, the economic value of minerals challenges the sustained health of salmon and steelhead fisheries and the communities that rely on them. This spring, Oregon Senators Wyden and Merkley and Representative DeFazio introduced Chetco River protection bills in Congress. The bills propose to increase federal protection designations on three miles of river and prevent new mining claims. This legislation signals a broader understanding of the dangers posed by modern gold mining techniques and the importance of salmon and steelhead to the environment and economy of the Northwest. But even with greater protections for the Chetco, other watersheds throughout the Pacific Northwest are threatened by ongoing mining. Crag continues to work with community members to monitor these operations and challenge those which pose the greatest threat to our natural legacy.

Thank you for your interest in Crag Law Center’s work. Inside this issue of the Summit you will find more information on our work on mining issues, as well as updates on our efforts to protect livable communities and your public lands.
Klamath Forest Official Rescinds Controversial Gold Mining Project

by Julie Krogh, Summer Associate

Southern Oregon and Northern California are bound together by the biologically diverse Klamath-Siskiyou ecoregion. While internationally recognized for its unique biodiversity, the region has suffered from logging, fire suppression, mining, road building, and grazing. Recently, Wabuska Mining proposed a gold mining project involving surface excavation and an on-site mill in the Klamath National Forest. The High Bar mining project is proposed on land in the Salmon River watershed of Northern California. The Klamath Siskiyou Wildlands Center, Klamath Riverkeeper, Environmental Protection Information Center and Klamath Forest Alliance asked the Crag Law Center to help them challenge this project as part of their work to protect and restore the Klamath-Siskiyou ecoregion.

The project threatened essential fish habitat in an already abused region by employing a gasoline-powered pump to remove 600 gallons of water per minute from McNeal Creek. Data suggests that McNeal Creek’s flows during the hot summer mining months would not support these extensive withdrawals. McNeal Creek provides cold water necessary for young fish in the Salmon River. If Wabuska Mining is permitted to pump out the proposed amount of water, McNeal Creek could run dry or dangerously low, leaving salmon and trout in the Salmon River without the cold water they need to survive.

Conservation groups have pointed out the flaws in the proposal to the U.S. Forest Service. Pursuant to our nation’s federal laws, the agency must consider the current conditions of the area and a variety of different ways to achieve the project goals while minimizing the negative impacts of the project. The Forest Service ignored less disruptive alternatives and analyzed only the proposed project. As a result, they failed to establish a baseline against which to measure the impacts of mining activity.

When the Forest Service approved the project, Crag helped the conservation groups file an appeal. Subsequently, the Forest Service decided that the project was legally indefensible and withdrew its decision. We will continue to work with our clients to press the agency to use accurate data when it assesses the impact of mining on stream flows and consider a broader range of alternatives. Complying with the law may well lead them to reject the proposal altogether.

www.crag.org

Chromite Mine Threatens Local Property Rights, Water Supplies and Native Fish

by Polly Kang, Summer Outreach Intern

In the Seven Devils area of the Oregon Coast, Oregon Resources Corporation (ORC) wants to begin open pit mining for chromite. However, groundwater testing at the site has shown traces of hexavalent chromium, which is cancerous to humans and lethal to young fish. While ORC states that mining will bring an economic boost – providing 70 jobs to an area where 3,500 are unemployed – there are significant questions about the long-term environmental effects of the plan and no guarantee that the short-term jobs will go to local people.

Because ORC has not openly discussed the potential adverse impacts of chromite mining to this area, the Bandon Woodlands Community Association voiced its concerns and asked the Oregon Coast Alliance and the Crag Law Center to take a closer look. Through careful review, our staff attorneys determined that high volume mining in an area that receives over 60 inches of rain annually will inevitably lead to increased sedimentation in streams and contamination of groundwater in mine pits. Mining will strip the area of vegetation and top soil, destroying wetlands. While ORC says it will try to mitigate the impacts on wetlands, it does not demonstrate that its efforts will restore wetlands functions.

This project also has direct impacts to the local community. Almost 250 homes in the immediate area rely on wells for drinking water. These wells may become contaminated or dry as groundwater migrates toward open mining pits. Additionally, pollution from the mining could enter adjacent creeks and flow directly to the ocean. Coastal cutthroat trout and steelhead use these streams for spawning and rearing.

Residents are concerned that fish populations will decline and that recreational opportunities will be negatively impacted. The mine will also result in a high volume of traffic from delivery trucks, which will increase congestion and degrade the livability of the area with air pollution.

ORC has stated its intent to open additional mines in the region, despite the absence of a local market for its products. The Crag Law Center has agreed to work with local citizens and the Oregon Coast Alliance to help address these issues and to ensure that the proposal complies with all applicable environmental laws.

McNeal Creek is safe for now from the High Bar Mine.

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When most people think about water pollution we envision pipes dumping industrial waste into water bodies, but runoff from rain also plays a major polluting role. Washing our cars, bikes, or trucks in our driveways or applying chemicals for lawn and garden care to our yards means that the rain will wash the soap and chemicals into stormwater drains that inevitably flow into our rivers. In the river, these toxics accumulate in fish and wildlife. The quality of the water also degrades, increasing water treatment costs and putting our fishing and swimming holes at risk.

Rain also washes over industrial sites and roadways and inputs toxics on an order of magnitude greater than is produced at our homes. To make sure that industrial operations meet their responsibilities under the Clean Water Act, Crag works with local river conservation groups and citizens to ensure that industrial stormwater pollution is not degrading the quality of the water in our rivers.

Our most recent work includes two legal actions for the Columbia River Keeper against industries located along the Columbia River. These companies were violating their Clean Water Act permits by discharging stormwater with high levels of pollutants like zinc and sediment. Under our nation’s laws, citizens are empowered to enforce the permit’s terms, which is exactly what we did.

In response, the companies agreed to settle both matters and to implement projects to help restore the Columbia. The companies also agreed to put in place “best management practices” that will decrease the pollutants that are carried by rainfall of the site and into the Columbia River ecosystem. Crag will continue to assist local organizations in cleaning up the stormwater that flows to our rivers and lakes.

### Federal Focus

**Temporary Roads, Lasting Effects**

*by Eric Swanson, Summer Associate*

On the eastern flanks of Mount St. Helens in the Gifford Pinchot National Forest, land that was logged in the 1960’s is beginning to develop mature and old growth characteristics. Large living trees, fire-scarred standing dead trees and moss-covered logs abound. Huckleberry bushes flourish in the understory. Grouse, deer, elk, endangered animals and wild fish rely on these habitats for forage and prey.

Despite this natural recovery, the Forest Service recently authorized a 2,800-acre timber sale in the area, claiming it will help restore forest health. Our client, the Gifford Pinchot Task Force (GPTF), has surveyed the scene and believes the plan will do the opposite.

GPTF monitors activities in the Gifford Pinchot National Forest, and while they have collaborated with the Forest Service on numerous restoration projects, including thinning dense forest stands, this project proposes to log areas designated as old growth reserves. These reserves are to be maintained to develop old-growth characteristics and logging is discouraged. As part of the project, several miles of roads would have to be built. This would increase sediment in streams and threaten the viability of bull trout and Coho.

The Forest Service claims that trees are dying from competition and they need to be logged to improve forest health. In field surveys, staff from GPTF and Crag staff did not find this to be the case. During a recent site visit, we found that many units contain large mature trees and the forest is developing old-growth characteristics on its own. Logging requires the construction of significant amounts of roads and landings, which would contribute sediment to adjacent streams. A careful review of the Forest Service’s plan shows that it grossly underestimated the project’s effects on soil productivity in this sensitive landscape.

On behalf of GPTF and its members and supporters, Crag has filed suit against the Forest Service for violations of federal environmental laws. The case is in the early stages and will likely be heard in federal court in the Western District of Washington this winter. Visit our Public Lands page online for more details on the case.

### You can help keep your rivers clean!

- Use biodegradable soaps without phosphates;
- Take your car to “eco-friendly” car washes that do not pollute your local rivers;
- Use chemical free lawn and gardening practices;
- Clean up after your pets Install an ecoroof or a rain garden;
- Disconnect your downspouts.
Alex Stiles, the brewmaster at the Lucky Labrador Brewery in Portland, is a proud supporter of the Crag Law Center. He grew up in Oregon and left to get out in the sun at the University of Arizona on a scholarship. Though he studied economics and finance, he knew that “pushing papers” was not for him. Spurred on by a book about home brewing from his brother, Alex began a quest to make tasty beer. During a trip in Europe, he tasted various beers that were actually delicious – in his words, “not Budweiser.” When he returned home, he worked at the Bridgeport Brewery and learned to brew. Then, he decided to collaborate with a friend and created Lucky Labrador Brewery, a small place with “no TV’s, to concentrate on the beer.”

Being a native Oregonian, Alex was always interested in preserving the environment that he enjoyed as a kid. He incorporated green thoughts even when brewing – in fact, he created Solar Flare, the first beer made with solar heated water. Now, all of Lucky Lab’s beer is brewed using water heated by 16 solar panels on the roof. Although he needed a “big fat check” in the beginning to pay for this equipment, his investment has paid off with tax incentives and huge reductions in the gas bill.

Alex first heard of Crag when staff attorney Ralph Bloemers called to ask him to donate beer for a fundraiser. Back then, Crag was working to protect the Cooper Spur area. Alex said, “It’s nice to have one part of the mountains undisturbed. I don’t think destination resorts are needed over the entire mountain.” Alex realizes that people like our attorneys at Crag “watch out for what’s going on.” He says there are people and organizations that need help but cannot afford expensive legal representation – Crag provides professional services for free or at bargain rates.

Alex supports many other non-profits and holds events throughout the year that bring Portland together. On September 11, Lucky Lab will host Tour de Lab to benefit DoveLewis, a nonprofit emergency animal hospital. Check it out at www.tourdelab.com!

Because of people like Alex, Crag can continue to serve our community. Thank you, Alex!
Keeping It Rural

by Ralph Bloemers, Staff Attorney and Eric Swanson, Summer Associate

Have you have ever enjoyed a fine Oregon pinot or eaten Oregon-grown fruit and vegetables? Do you own property in wine or farm country and enjoy the rural tranquility of the area? If so, you will appreciate a recent decision by the Ninth Circuit Court of Appeals protecting Oregon’s farm and forest lands from the rampant development proposed across the state under Measure 37.

After Measure 37 passed in 2004, landowners filed over 7,500 claims. Thousands of waivers were issued to a minority of property owners to pursue development on large swaths of rural land, while their neighbors were still subject to land use laws. In 2007, voters responded to the threat to Oregon’s rural lands and water supplies and passed Measure 49 by a wide margin. Landowners who had filed claims under Measure 37 could convert them into the right to build up to three houses outright, or more if they could actually prove a loss.

Many people have pursued their options under Measure 49, but one group in southern Oregon’s Jackson County did not give up. A group of landowners who had filed claims under Measure 37 to develop gas stations, subdivisions, and gravel pits on farm and forest land formed a group called Citizens for Constitutional Fairness in 2008. They filed suit in federal court challenging Measure 49 with the novel theory that Measure 37 waivers formed a constitutionally protected contract between the landowners and the county. A federal district court judge in Medford agreed and blocked the voter-approved Measure 49. The decision threatened to unravel Oregon’s land use system.

In response, neighboring landowners contacted the Crag Law Center and we looked into ways to reverse it. We took quick action to file an appeal on behalf of Oregon Shores Conservation Coalition, Rogue Advocates, Friends of Marion County, and Friends of Polk County. We convinced the district court judge to hold off on implementing his ruling and we brought an appeal to the Ninth Circuit Court of Appeals.

This summer, a three-judge panel of the Ninth Circuit reversed the District Court’s decision. The decision effectively upholds the validity of Measure 49 and protects Oregon’s precious farm and forest lands from rural sprawl and development. Neighboring property owners throughout Oregon can breathe easy. Property owners with claims under Measure 37 can now pursue claims under Measure 49, allowing them to construct up to three homes on their property, or more if they can actually prove they lost value.

This victory effectively puts to rest an Oregon-wide threat to the continuity of Oregon’s farm and forest land and property values throughout the state. Attorneys for the CFCC have promised to appeal, but they face long odds in convincing the Supreme Court to hear the case. In the decision, the Ninth Circuit cited to the plaintiffs’ own admission that they had no written contract and to a case from 1921 to reject the plaintiffs’ legal theories.

The Crag Law Center also has over twenty site-specific cases pending in state courts seeking to protect farm and forest lands on the Oregon coast, in the Willamette Valley, in Yamhill County wine country and other places throughout Oregon. In these cases, Crag represents local environmental and community groups comprised of landowners who want to conserve the rural nature of their immediate communities. Oregon’s comprehensive land use laws enhance property values and ensure the livability of these communities. These lands also form the backbone of Oregon’s acclaimed nurseries, wines, cheeses and other products that we enjoy at local markets.

Crag is working hard to close this unfortunate chapter in Oregon’s land use history, and we plan to continue to work with local people as they shape the livability of their communities into the future. Be sure to check the Crag website, www.crag.org for updates on these and other cases.
Crag and Partners Secure Landmark Ruling Protecting Your Coastal Rivers

by Chris Winter, Staff Attorney

Crag and our partners are celebrating the Ninth Circuit’s long-awaited decision on sediment pollution from logging roads in the Tillamook State Forest. The Tillamook is a crown jewel of Oregon’s natural heritage. These forests burned in the 1930’s as a result of extensive logging, and a massive reforestation effort followed. Today threatened Oregon coast coho salmon spawn in the rivers and streams of the forest, and local fishermen flock there every year in search of their prized catch. Clean water and healthy habitat support the local economies and are integral to the social fabric of Oregon’s rural communities.

The Oregon Department of Forestry (ODF) and Board of Forestry (Board) have placed these values at risk by miscalculating your Tillamook and Clatsop State Forests. ODF’s network of logging roads is a well-known fish killer. Sediment-laden stormwater is routed directly into salmon spawning and rearing areas, suffocating eggs and clogging the gills of young fish. ODF and the timber industry have stubbornly refused to get a permit under the Clean Water Act, claiming they have the authority to manage the sediment. ODF and the Board of Forestry (Board) and the timber industry are integral to the social fabric of Oregon’s rural communities.

The Board of Forestry (Board) and Oregon’s rural communities.

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The ruling comes at an inopportune time for ODF and the Board. Bowing to pressure from the timber industry and a few local county politicians, the Board voted 5-2 to significantly increase the level of clearcuts across your Tillamook and Clatsop State forests. Board Member Peter Hayes voted against the changes, calling the increase “too much, too fast, too risky.” The Board refused his request to seek independent scientific review before making the decision, despite the Department’s own scientists’ concerns about the effects of intensive logging on salmon and other species. ODF and the Board are in no position to position the level of clearcutting if they can’t get their existing road network in order.

Crag worked on this case with Paul Kampmeier of the Washington Forest Law Center, who argued before the Ninth Circuit and put in countless hours on the case. A big thanks also to NEDC, a long-standing Crag client.

by Megan Hooker, Paralegal and Office Manager

Each summer, students come from around the country to help Crag protect the natural legacy of the Pacific Northwest. Don’t be fooled by the picture above – our amazing volunteer interns worked hard and were pivotal in our efforts this summer.

Tara Gallagher (3L, Lewis and Clark) worked with staff attorney Chris Winter on offshore oil and gas issues in Alaska. She plays a key role in Surfrider’s campaign to ban plastic bags in Portland, and was one of our central volunteers for our Wild Shots Auction in 2009. After graduation she hopes to return to her roots in the Midwest and start her own public interest firm.

Polly Kang (Junior, Duke University) worked with staff attorney Ralph Bloemers to cut a 10 minute film about the removal of Hemlock Dam. She also helped redesign Crag’s website, and assisted with outreach for our 3rd Annual Wild and Scenic Film Festival in Hood River. Polly is considering a career in the law.

Julie Krogh (2L, UCLA) worked with staff attorney Courtney Johnson in the Coastal Law Project, focusing on mining issues and Measure 49 cases. A native Oreganian, she was happy to be back in the Pacific Northwest, and enjoyed riding Cycle Oregon and fishing the Deschutes. Prior to law school, Julie worked with Teach for America.

Emily Reid (3L, Willamette University) worked with staff attorney Tanya Sanerib protecting the North Slope of Alaska and the Tongass National Forest. Emily worked with the Governor’s Natural Resources Office last summer and is completing a certificate in Sustainable Environmental, Energy and Resources Law. We had a dreary start to summer, and I enjoyed having a fellow desert Southwest native to commiserate with.

Eric Swanson (3L, Georgetown University) worked with staff attorney Ralph Bloemers defending rural farm and forest lands from continued attempts to bypass Measure 49, and helped prepare a challenge to a timber sale in the Gifford Pinchot National Forest. An avid climber, Eric enjoyed every waking moment in the Pacific Northwest. He studied environmental science in southeastern forests and interned at a law firm in Spain last summer.

We’re proud to have hosted these bright advocates for the public interest and can’t wait to see what they do next!
Crag is truly blessed with great volunteers and supporters. So many people have helped keep us going! We would like to specifically thank:

Artists & Photographers
Alberto Rey – Cover Design, T-shirt Design
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Shirley Gillham – Office Support

Law Students
Tara Gallagher – Lewis & Clark
Emily Reid – Willamette
Eric Swanson – Georgetown
Julie Krogh – UCLA

Undergraduate Intern
Polly Kang – Duke University

Filbert 2010 Volunteers and Donors
Amanda Caffall, Sam Drevo, Shirley Gilham, Charlotte Hager, Ken and Sue Johnson, Scott Johnson, Megan Osborne, Anu Sawka, Ted Scheinman, Bethany Thomas, Jodi Wacenske, Alexis Restaurant, Gala Springs Farm, Gathering Together Farm, Nellie McAdams, Olaf Tofu, Springhill Farm, Sun Gold Farm, Tazo Tea, VooDoo Doughnuts

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– Filbert Farm

Paralegal, Development Assistant, and Office Manager
Megan Hooker

Foundations
Brainerd Foundation, Burning Foundation, Impact Fund, Mazamas Conservation Committee, McIntosh Foundation, McKenzie River Gathering, Oak Foundation, Ordinary People Foundation, Patagonia

Corrections to Spring 2010 Newsletter
• Lisa Sprague was a valuable volunteer at Wildshots 2009.

• Our feature article about Board Member Jessica Burness listed her as working for the Native American Rehabilitation Center Clinic. Jessica currently works at Providence Family Medicine as a faculty member in the Family Medicine Residency Program.

Our apologies for the omission and error!
Crag has a newly redesigned website and blog! Check it out at www.crag.org. We welcome your comments online!