A View of the Summit
from the CRAG
On to New Horizons

The U.S. Supreme Court - illustration by Sarah Deans
Celebrating the 40th Birthday of the Clean Water Act
By Chris Winter, Staff Attorney

On October 18, 1972, the U.S. House of Representatives voted 247-22 to override President’s Nixon’s veto of the Clean Water Act, which had occurred only one day earlier. Of those 247 votes, Republicans cast 96. Over the course of two dramatic days, a bi-partisan coalition, representing the interests of the American public, gave birth to one of the most important environmental laws in the history of our country.

Broad public support for the bill resulted from increasing awareness about the impacts of water pollution. Stories about burning rivers, polluted drinking water, and contaminated fish circulated in the press, and citizens all around the country put pressure on their elected representatives to find a solution. The resulting legislation set a laudable goal – zero discharge of all water pollution by 1985 to ensure water that is fishable, swimmable, and drinkable.

Other attempts had been made to clean up the pollution that was continually being dumped into our rivers and streams, but they had all failed. With the Clean Water Act, Congress took a new approach to the problem, and, in the process, crafted one of the most powerful tools we have for protecting the health of our local watersheds.

Although the law was groundbreaking in many ways, two components fundamentally changed the playing field. First, Congress created a federal permitting program that applied to the discharge of pollution from any “point source,” which is defined broadly to include any pipe, ditch or channel. Congress attempted to cast a very broad net, creating a

Crag is a client-focused law center that supports community efforts to protect and sustain the Pacific Northwest’s natural legacy
In the 40 years since the passage of the Clean Water Act, courts have often been asked to clarify the contours of this citizen enforcement mechanism. EPA and industry often try to limit the scope of citizen suits, while conservation and watershed groups try to hold polluters accountable to the rule of law.

This tug of war plays out on many levels, but this winter, it will take center stage in the U.S. Supreme Court in a case that originated in the temperate rainforests of the Oregon Coast Range and on the desks of Crag’s attorneys and its partners.

Inside this issue of A View of the Summit, you can read up on the case, which will be argued on December 3rd in Washington, DC. You can also learn about our work using the Clean Water Act to protect Tumalo Creek in Central Oregon and the Coos Bay watershed in Southwestern Oregon, as well as our work on old-growth forests and climate change.

Thank you for keeping up with our work, and next time you paddle through your local creek or cast a fly into your favorite river, keep in mind that back in 1972, Congress gave you the power to protect that special place.
Logging Deferred for the Birds
by Tanya Sanerib, Staff Attorney

On November 26, we learned that eleven timber sales and all logging activities in known occupied marbled murrelet sites in the Tillamook, Clatsop, and Elliott State Forests were halted by a federal judge in Oregon. After filing an Endangered Species Act case against Oregon officials on behalf of Cascadia Wildlands, the Center for Biological Diversity, and the Audubon Society of Portland last May, Crag and its partner attorneys asked the court to halt some of the most egregious logging projects on the Tillamook and Elliott State Forests. The court stopped this logging until the case is resolved.

The challenged logging would destroy important nesting habitat for marbled murrelets – which are small brown seabirds that are protected under the Endangered Species Act. Federal law forbids activities that harm, harass, injure or kill marbled murrelets, and the planned timber sales would do just that by wiping out key areas of older forest that the birds rely on to shelter and raise their young. In recent years, Oregon has decided to increase logging in these forests, putting marbled murrelets’ critical nesting spots on the chopping block.

Before the court ruled, Oregon State Officials took action. The State first agreed to postpone logging of eleven timber sales over the summer. Then, this fall, the State announced it was deferring additional sales from the chopping block in the Elliott State Forest.

While the State agreed to postpone logging of the eleven sales, the court found this postponement was not enough to prevent harm. As older forest areas have declined due to logging, so too have murrelet populations. As a result of the court’s ruling, these critical stands of old-growth and mature forest totaling over 800 acres are saved for the birds. For the time being, Oregon’s coastal forests will “keep a bird on ‘em.”
Kevin Russell has enthusiastically supported the Crag Law Center since Ralph Bloemers and Chris Winter founded the organization in 2001. As an attorney and a mountaineer, Kevin understands the importance of Crag’s work at the intersection of law and the environment.

Kevin first met Ralph in 1998, right after Ralph graduated but before he started practicing law. Ralph was traveling alone in Peru and looking for people to go with him into the Cordillera Blanca – a mountain range in the Peruvian Andes punctuated by 40 peaks over 18,000 feet. Kevin was there with three climbers and Ralph prevailed upon the team to let him join in their trek to Alpamayo. Kevin helped Ralph over a 16,000-foot mountain pass when Ralph got altitude sickness and started to lose his vision. Over three days of trekking, Ralph and Kevin formed a friendship that has endured to this day.

Kevin was born in Kent, Washington and raised in the small American town of Clarkston, Washington. As a boy he roamed the countryside of eastern Washington and northwestern Idaho. Kevin was introduced to hiking, mountaineering and climbing through friends and the Boy Scouts, and these early experiences fueled his passion for adventure.

Kevin earned an electrical engineering degree from Washington State University and studied law at Willamette University. Today, he is a patent attorney in Portland and represents numerous high technology companies including Sharp Electronics. Kevin focuses primarily on hardware, software and image processing, and also has created some successful inventions of his own. Kevin enjoys the challenge of his work, but he also makes sure to get out and enjoy our natural treasures.

Kevin has pioneered some of the most dangerous routes on Mt. Hood, including a new route called
the Black Spider on the mountain’s East face. He climbed that route in late summer and has also ascended the notorious Yocum Ridge route on the mountain’s west side in winter and mid-summer. These days, he has moved beyond mountain climbing to backcountry skiing, kayaking, and SCUBA diving. Now, instead of walking he is able to ski down and enjoy a new challenge. Kevin also enjoys the quiet one can find in the world. He recently went on a weeklong trek on the Skyline Trail through the Olympic Mountains.

Kevin’s passion for preserving pristine, wild lands is a big reason why he supports Crag. But the roots of his support go deeper. When I met with him, I found that he supports Crag because, as he put it, “litigation is a powerful force in ensuring environmental protection. Without it, there are insufficient incentives for the government or corporations to comply with environmental protections.” Kevin also has great respect for Crag’s staff. “Crag’s attorneys are trustworthy, ethical and intellectually consistent. These people have dedicated themselves to representing environmental groups and I am extremely grateful for their work to protect special places throughout the Pacific Northwest.”

Kevin donates to Crag regularly, enjoys our special events and recently committed to leave a legacy to Crag in his will – so that his giving spirit will support the next generation of environmental advocates and continue to protect the places he has enjoyed beyond his time on this earth. If you wish to join Kevin in leaving a legacy for future generations, please contact Suzanne at (503) 525-2724.

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**Pursuing Polluters in Coos Bay**

by Courtney Johnson, Staff Attorney

Crag is helping Coos Waterkeeper, Oregon Shores Conservation Coalition, and local Coos Bay resident Mike Martin hold a local excavation company accountable under the Clean Water Act for its careless disposal of construction wastes. Last Spring, Mike Martin woke in the middle of the night to the sound of rumbling earth and trees crashing down into Coalbank Slough, an arm of Coos Bay in front of Mike’s house. It was not an earthquake, but a landslide that started from a failed landfill on Mike’s neighbor’s property uphill from Mike’s house and the slough. Apparently, Johnson Rock Products had been dumping and grading material excavated from a construction project on Mike’s neighbor’s property. When the fill failed, large amounts of soil, asphalt, pipe, construction netting, and other construction debris careened down the hill, across Mike’s...
Coalbank Slough provides habitat for fish and aquatic organisms, including salmonid fish species that are listed on the federal Endangered Species List. Several listed species, including eulachon, Oregon Coast coho salmon, and green sturgeon inhabit the slough. Sediment and other pollution in the water can bury areas that fish use for breeding and foraging, obstruct their migration, and raise water temperatures. Under the Clean Water Act, individual citizens or groups may bring an action against an alleged violator. The citizen suit provision of the Clean Water Act serves to supplement both state and federal government enforcement actions so that everyday people like Mike can protect the waters they care about. In this case, DEQ has begun to take action against the polluter, sending a notice of violation and request for plans to remedy the situation and clean up the pollution. By pursuing an enforcement action, our clients can ensure that DEQ properly enforces the law, holds the proper parties responsible, and can help ensure that local water quality is improved through the dedication of penalty money to a Supplemental Environmental Project in the area. Mike says “working with Crag and Coos Waterkeeper empowered me to stand up to environmental bullies.” Crag is pleased to be able to support our clients in Coos Bay and help their efforts to protect water quality and aquatic habitat in the bay and its tributaries.

“I realized that if I don’t stand up for the fish and other creatures in the bay, no one else will,” - Mike Martin
Salmon, Stormwater & the Supreme Court
by Chris Winter, Staff Attorney

On December 3rd of this year, Crag and its partners will be in the United States Supreme Court, working to protect salmon habitat and clean water from the pollution generated by the logging industry and its poorly managed road system. The stakes are high, not only for our iconic runs of salmon, but also for the Clean Water Act itself. On the 40th birthday of this landmark legislation, the Supreme Court will be asked by industry and the federal government to shrink the role of citizen participation and to greatly expand the ability of the Environmental Protection Agency (EPA) to flout the directives of Congress.

The case originated in the Coast Range of Oregon in the Tillamook State Forest. The Tillamook provides important habitat for the threatened Oregon coast coho salmon. Despite this fact, the Oregon Department of Forestry, at the behest of the timber industry, has been aggressively clearcutting these state lands. Logging has a number of deleterious impacts on salmon, but some of the most pervasive are caused by stormwater running off of poorly maintained logging roads, through ditches and pipes, directly into salmon streams. The sediment carried by this polluted stormwater fills in spawning beds, clogs the salmon’s gills, and raises water temperature.

The Clean Water Act requires a permit for any pollution from a “point source.” Stormwater that is discharged from municipal streets, construction sites, mines, open dumps, and industrial facilities all across the country are subject to a national permitting system. Somehow the timber industry has escaped the reach of the national permitting program for decades, largely because EPA, under enormous pressure from lobbyists, has never forced the timber industry to comply with the Clean Water Act.

Along with our partners, the Washington Forest Law Center and www.crag.org
Northwest Environmental Defense Center, Crag sought to enforce the law where EPA had refused to do so. Filing a citizen suit in federal court, we attempted to hold the State of Oregon and the timber industry accountable to the plain language of the Clean Water Act – requiring a permit for a point source discharge of polluted stormwater. The Ninth Circuit Court of Appeals agreed, and the Supreme Court accepted the case for review earlier this year.

The issues before the Supreme Court are complex, but much of the case boils down to how the court will balance the powers assigned to Congress, EPA and the public through the citizen suit provision. EPA and the logging industry made three main arguments.

First, Congress said any pipe is a point source. EPA now claims the power to redefine the timber industry’s pipes and ditches as “non-point” source or “natural runoff.”

Second, in 1987, Congress directed EPA to require permits for all sources of stormwater that are associated with industrial activity. The timber industry and EPA now argue that logging and logging roads are not industrial even though EPA’s regulation says just the opposite.

Third, Congress also said that citizens have the right to enforce the law where EPA fails to do so, and NEDC has sought to enforce the plain language of the Clean Water Act through this citizen suit. The timber industry, however, and to a certain extent EPA, want the Court to narrow the public’s ability to enforce the law.

EPA’s regulations are unclear. The agency interprets its unclear regulations as creating an exemption for the timber industry and argues that the court cannot, in the context of a citizen suit, determine whether EPA’s interpretation conflicts directly with the statute as written by Congress. EPA wants the discretion to write unclear rules, to interpret them years or decades after their passage in a way that conflicts with the statute, and to thereby limit the ability of the public to enforce the law.

Confused? Well, stay tuned. We expect a decision from the Supreme Court in May or June of 2013. Until then, check in at our website, crag.org, for updates and more information on the case.

Finally, we’d like to extend a big thank you to our partners: Paul Kampmeier with the Washington Forest Law Center, Mark Riskedahl with the Northwest Environmental Defense Center, and Jeff Fisher, from the Stanford Supreme Court Litigation Clinic, who will argue the case on December 3rd.
Lawsuits are not often the stuff from which movies are made, with few notable exceptions. But when you combine amazing young people who are passionate advocates for the environment who also sued their government for failing to combat climate change, it makes for a great story line.

Crag is fortunate to be representing two courageous, passionate, and well-spoken young ladies in their climate change lawsuit against Oregon. Our clients Kelsey and Olivia are teenagers suing their home state for failing to combat climate change as required by the public trust doctrine.

Their stories about our already changing climate, its impacts on their lives, and their fears for the future are heart wrenching and incredibly effective at getting people to grasp what climate change means. So, we were delighted when Oregon, and our client Kelsey Juliana, were selected to be highlighted in a short documentary film sponsored by Witness, Our Children’s Trust, and the iMatter campaign.

Titled TRUST Oregon, the film is a beautiful encapsulation of Oregon’s greatly cherished rivers, forests, and ocean coast, accompanied by Kelsey’s passion for these places and her concerns about how climate change is altering these resources. Kelsey explains why Oregon is less rich in fresh water than it once was, how our forests are experiencing more catastrophic fires, and how our coastlines are more dramatically eroding – all because of climate change. Despite all these changes, Kelsey remains hopeful and willing to fight for her future.
Kelsey’s passion for Oregon is contagious but very little time remains for Oregon and other governmental bodies to take action to preserve our children’s future.

Climate scientists are calling for a return to 350 parts per million of carbon dioxide in our atmosphere by the end of the century. Currently, these scientists estimate that we are over 400 parts per million.

To preserve our atmosphere for the next generation, we have to cut our carbon dioxide emissions by at least six percent per year starting this year. Kelsey and Olivia’s lawsuit is one way to try to get there. But this message needs to shared far and wide, so we can spur our government to action.

The TRUST film series is one way in which you are empowered to do something about climate change. Show the films to your family and friends, share them with your children’s school classes, and use them to advocate for more protections for our climate.

The films are available on-line at ourchildrenstrust.org and you can request copies from Witness. If you want to support Kelsey and Olivia’s cause or join in their fight, please make a donation to Crag today.
Tumalo Creek and Tumalo Falls are picturesque destinations for locals and visitors. When settlers first arrived in the 1880s, the Tumalo Creek area was home to the Molalla Indians. The Klamath trail passed through the area connecting the Klamath Marsh and river basin in the south with the indigenous trading center to the north at The Dalles. Settlers named the creek Tumalo, derived from the Klamath word Tumallowa meaning icy water.

These first settlers created the Columbia Southern Irrigation district to support agriculture in their community. Tumalo Creek has provided water for irrigation and municipal water to the city of Bend for a century. The creek is over-allocated, meaning the Oregon Water Resources Department has handed out more water rights than there is water available. Without adequate flows, the icy waters warm and can even leave a creek bed dry, killing stranded fish. Excessive water diversions degrade the ecosystem and jeopardize the survival of resident redband, brown and brook trout that live in the creek. Bull trout were once common in these waters but past logging, grazing and excessive water diversions raised water temperatures and silted the stream, killing off these federally listed fish.

Tumalo Creek is now a protected waterway. The State of Oregon has designated it as trout spawning and rearing habitat and imposed strict water temperature standards in an effort to recover the stream. Thanks to the tireless efforts of countless individuals, institutions and groups like our client Central Oregon LandWatch, the creek is on the road to recovery. LandWatch has worked to return water to the creek so people may again enjoy fishing there and to preserve the scenic beauty of this special place.
that people enjoy for hiking, skiing and biking.

This summer, LandWatch asked Crag to take on a challenge to the City of Bend's proposed Bridge Creek Surface Water Improvement Project. Instead of looking to available groundwater sources, the City proposed the project to divert greater volumes of water from Tumalo Creek to provide for Bend's future growth. The City planned to replace functioning pipes with a single, larger-capacity pipe and install hydropower turbines in a later phase of the project to use the diversion to make money.

In October, Crag attorneys raced to file for an injunction seeking to halt the project and protect the creek from degradation. Chief Judge Ann Aiken of Oregon Federal District Court granted a preliminary injunction. Judge Aiken is a second-generation Oregonian and is familiar with the watershed. Explaining that “water is the new oil,” Judge Aiken found that decisions affecting water resources must be made with complete and accurate information. In her written opinion, she questioned the accuracy of the City's analysis that ignored available data from the last 25 years showing an increase in temperature in the creek and decrease in water volume.

The newly elected Bend City Council now has an opportunity to take a closer look at the proposed project and engage its citizens in solutions that the community can support. Crag will continue to support Central Oregon LandWatch’s efforts to protect the Tumalo Creek and water resources of Central Oregon.

Support Crag this holiday season with a donation of $250 or more, and Mike McCarthy at Trout Creek Orchard will send you or a loved one a box of Hood River Valley pears!

The McCarthy family has been growing pears in the Hood River Valley for generations. Like so many farming regions, water is the lifeblood of their community.

When developers threatened the water supply and their livelihood, the McCrythys and their neighbors asked Crag Law Center to help. Crag provided them with the tools to stand up and protect their orchards and their way of life for now, and for the future.

Simply make a donation of $250 or more to Crag Law Center between November 22nd and December 31st, and let us know where you would like the pears to be shipped.
OUTREACH UPDATE

by Suzanne Savell, Development Coordinator

This summer and fall, Crag supporters brought together their friends to celebrate and support Crag by hosting amazing fundraising events at their homes. In July, over 200 Crag supporters and volunteers gathered on the banks of the Willamette River to celebrate summer and raise over $10,000 for Crag’s work. Hosted by Jason Weber, the Base Camp Bash featured live music, kayaking, yard games, a cake walk, a delicious dinner and a square dance. Special thanks to Jason for opening up his beautiful home for all of us to enjoy.

In August, long-time Crag sustainers Sadhana & Sunil Shenoy hosted a dinner party to raise funds to support Crag’s work to defend our clean water before the Supreme Court. And in October, Heather Aladeff and Crag board member Jennifer Baldwin hosted a gathering of mountaineering friends to drum up support for Crag’s work to protect Mt. Hood.

In November we partnered with Columbia Riverkeeper to present the Wild & Scenic Film Festival at Columbia Center for the Arts. It was Crag’s fifth year bringing the film festival to Hood River, and we were excited to have a packed house both nights. A special thanks to Columbia Riverkeeper, Doug Sports, SYRCL and volunteers Patrick Mounts and Chris Schnaidt for making this year’s festival such a great success!

A big crowd of Crag friends and supporters gathered at Migration Brewery in Portland on November 27th to raise their pints and give Chris Winter and NEDC’s Mark Riskedahl a festive send off as they head to DC to appear before the U.S. Supreme Court.

On December 8th, Crag and Our Children’s Trust will present an inspirational afternoon of films from the Stories of TRUST series, including the Portland Premier of the TRUST Oregon film, which stars Crag’s client, sixteen-year-old Kelsey Juliana. Her brave actions led to the filing of a lawsuit against Oregon for failing to combat climate change. You can watch & share the film at ourchildrenstrust.org.
Crag Credits

Crag is truly blessed with great volunteers and supporters. So many people have helped keep us going!

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David Petrie, Kristine Nystrom and Kristin Wolter – Photographs
Paula Reynolds – Crag Logo
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Crag is truly blessed with great volunteers and supporters. So many people have helped keep us going!