

AOKI WATER JUSTICE CLINIC:

UC Davis School of Law

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THE HUMAN RIGHT TO WATER: MOVING FROM ASPIRATION TO REALITY

After years of organizing, community groups and water rights activists had good reason to celebrate when Governor Jerry Brown signed AB 685 (Eng) into law in September 2012.¹ With the passage of this bill, California became the first state in the U.S. to legislatively recognize a human right to water, declaring that “every human being has the right to safe,

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¹ ENVIRONMENTAL JUSTICE COALITION FOR WATER, THIRSTY FOR JUSTICE: THE STRUGGLE FOR THE HUMAN RIGHT TO WATER, <https://ejcw.org/thirsty>.

clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”²

The bill declared a new state policy that state agencies must consider when adopting or establishing policies, regulations, and grant criteria pertinent to water uses.³ However, the bill was not a panacea; it neither expanded the state’s obligation to provide water, nor did it require the state or water companies to spend additional resources to develop water infrastructure.⁴ Rather than mandate any specific action, the bill instead provided a broad policy statement, setting an aspirational goal for the state to meet.⁵

The need is undeniably great in our state. According to the California Legislature, one million Californians lack access to water that is reliably safe for drinking.⁶ As Tulare County supervisor Eddie Valero remarked about the town of East Orosi’s drinking water: “Imagine youth growing up only knowing water comes from a bottle and not the kitchen tap.”⁷

In fact, drinking water in California remains the tale of two states. In one snapshot, 400 of the state’s largest water systems — those serving more than 3,000 customers — provide more than 90 percent of the state’s residents with safe drinking water.⁸ In the other, as experienced by disadvantaged communities in the San Joaquin Valley, a majority of community water systems are small, serving fewer than 200 customers.⁹ Almost

² CAL. WATER CODE § 106.3 (2013). Two states, Massachusetts and Pennsylvania, have recognized the public’s right to clean or pure water in their state constitutions. See MASS. CONST. art. 97; PA. CONST. art. 1, § 27.

³ CAL. WATER CODE § 106.3(b) (2013).

⁴ CAL. WATER CODE § 106.3(c) (2013).

⁵ DARCY BOSTIC ET AL., SUSTAINABLE FOR WHOM? THE IMPACT OF GROUNDWATER SUSTAINABILITY PLANS ON DOMESTIC WELLS 6 (UC Davis Center for Regional Change 2020).

⁶ CAL. HEALTH & SAFETY CODE § 116765 (2021).

⁷ Joshua Yeager, *East Orosi One Step Closer to Clean Water as Tulare County Moves to Become Administrator*, VISALIA TIMES-DELTA, June 23, 2021, <https://www.visaliatimesdelta.com/story/news/2021/06/23/east-orosi-one-step-closer-clean-water-tulare-county-moves-become-administrator/7718274002>.

⁸ See [California] State Water Resources Control Board, *Frequently Asked Questions: Safe and Affordable Funding for Equity and Resilience Program*, https://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/faq_safe_drinking_water_program_overview_factsheet.pdf.

⁹ JONATHAN LONDON ET AL., THE STRUGGLE FOR WATER JUSTICE IN CALIFORNIA’S SAN JOAQUIN VALLEY: A FOCUS ON DISADVANTAGED UNINCORPORATED COMMUNITIES

one-quarter of these small systems do not comply with health-based drinking water standards known as the Maximum Contaminant Levels (“MCLs”) set under the Safe Drinking Water Act.¹⁰ Thus, residents of these disadvantaged communities continue to face a triple penalty: (1) the health impacts of unsafe drinking water; (2) the high cost of the water service provided to them; and (3) the added financial burden of purchasing bottled water for their families.¹¹ “As a result, some impoverished residents pay upwards of 20 percent of their income for water utility fees, bottled water, and related transportation costs, whereas, ‘[i]n the United States, combined water and sewer bills average only about 0.5 percent of household income.’”¹²

California faces a great challenge to ensure that all of its communities have access to safe and affordable drinking water but has taken strides in the past decade to address this urgent need. Regarding the enormity of a similar human rights struggle, Dr. Martin Luther King Jr. struck the right tone when he stated: “We shall overcome ‘because the arc of the moral universe is long, but it bends toward justice.’”¹³

In this article, Section I outlines California’s legislative and administrative response to the moral imperative of a human right to water. Section II recounts the foundation of the Aoki Water Justice Clinic (“Clinic”) at UC Davis School of Law (“King Hall”). In Section III, the article provides several case studies as well as reflections by participating law students to illustrate ways in which the Clinic’s students helped to effect meaningful change for disadvantaged communities in our state.

13 (UC Davis Center for Regional Change 2018), <https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT.pdf>. A “disadvantaged community” is defined as “a community with an annual median household income that is less than 80 percent of the statewide annual median household income.” CAL. WATER CODE § 79505.5.

¹⁰ LONDON ET AL., *supra* note 9, at 14.

¹¹ *Id.* at 8.

¹² SAFE WATER ALLIANCE ET AL., BARRIERS TO ACCESS TO SAFE AND AFFORDABLE WATER FOR DISADVANTAGED COMMUNITIES IN CALIFORNIA 6 (2015), <https://www.law.berkeley.edu/wp-content/uploads/2015/04/Shadow-Report-on-Right-to-Water-JS25-150511-1.pdf>.

¹³ Martin Luther King Jr., *Address at the National Cathedral: Remaining Awake Through a Great Revolution* (March 31, 1968); see <https://www.youtube.com/watch?v=EinMxyjSDwo>.

I. CALIFORNIA'S STEPS TO ADVANCE THE HUMAN RIGHT TO WATER

The State of California typically finances public infrastructure such as water projects with general obligation bonds, which require approval by 50 percent of the voters.¹⁴ In 2014, the Legislature placed Proposition 1, a water bond, on the November ballot to increase the supply of clean, safe, and reliable water.¹⁵ Proposition 1 specifically targeted its drinking water funding to assist disadvantaged communities and required the State Water Resources Control Board (“Water Board”) to implement a technical assistance program for these communities.¹⁶ In the election, California’s voters overwhelmingly approved Proposition 1, authorizing \$241.8 million for drinking water projects.¹⁷

In March 2015, the Legislature again focused on assistance to disadvantaged communities by establishing the Office of Sustainable Water Solutions, now a part of the Water Board’s Division of Financial Assurance.¹⁸ The Office is intended to provide financial and technical assistance to disadvantaged communities and small drinking water systems to ensure the effective and efficient provision of clean and affordable drinking water.¹⁹

¹⁴ Alf Brandt, *Water Infrastructure Funding in California: Who Should Pay to Keep the Tap Running?*, 46 MCGEORGE L. REV. 165, 175 (2014), <https://scholarlycommons.pacific.edu/mlr/vol46/iss1/10>; see <https://lao.ca.gov/ballotanalysis/bonds>.

¹⁵ LEGISLATIVE ANALYST’S OFFICE, *THE 2015–16 BUDGET: EFFECTIVELY IMPLEMENTING THE 2014 WATER BOND 3* (2015), <https://lao.ca.gov/reports/2015/budget/water-bond/water-bond-021115.pdf>.

¹⁶ PAC. INSTIT., *INSIGHTS INTO PROPOSITION 1: THE 2014 CALIFORNIA WATER BOND 12* (2014), <https://pacinst.org/wp-content/uploads/2014/10/Insights-into-Prop-1-full-report.pdf>; CAL. WATER CODE § 79725(c); STATE WATER RESOURCES CONTROL BOARD, *TECHNICAL ASSISTANCE FUNDING PROGRAM PROCEDURE MANUAL 5* (2020), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/proposition1/docs/tech_asst/tafp_procedure_manual.pdf.

¹⁷ Brandt, *supra* note 14, at 165; State Water Resources Control Board, *Proposition 1* (2022), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/proposition1. The Water Board administers Proposition 1 funds for drinking water projects. *Id.*

¹⁸ CAL. WATER CODE § 189 (2015).

¹⁹ CAL. WATER CODE § 189(b)(5) (2015); see State Water Resources Control Board, *Office of Sustainable Water Solutions* (2022), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/sustainable_water_solutions.

In February 2016, the Water Board approved Resolution No. 2016-0010, adopting the human right to water as a core value and declaring its implementation to be a top priority in the Water Board's programs and activities.²⁰ In particular, the Water Board directed the Office of Sustainable Water Solutions to provide technical and compliance assistance to disadvantaged communities to evaluate solutions and select a sustainable approach that supports the human right to water.²¹

In its Human Right to Water List, the Water Board currently identifies 416 public water systems, serving more than 1 million residents, as either out of compliance or consistently failing to meet health-based drinking water standards.²² Recognizing the magnitude of this problem, the Legislature has repeatedly increased the Water Board's authority and capacity to address failures in these water systems. For example, the Water Board received additional authority to order a mandatory consolidation when a public water system, serving a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water.²³ In addition, the Water Board may appoint an administrator to perform the administrative, technical, operational, legal, or managerial services for a failing water company.²⁴ The Legislature also increased funding for these efforts by passing SB 200 in July 2019, which provides \$130 million per year for 10 years for the Safe and Affordable Drinking Water Fund.²⁵ To effectively administer this fund, the Water Board established the Safe and Affordable Funding for Equity and Resilience ("SAFER") program, which strives to "bring true environmental justice to California and address the continuing

²⁰ See STATE WATER RESOURCES CONTROL BOARD, ADOPTING THE HUMAN RIGHT TO WATER AS A CORE VALUE AND DIRECTING ITS IMPLEMENTATION IN WATER BOARD PROGRAMS AND ACTIVITIES 5 (2016), https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2016/rs2016_0010.pdf.

²¹ *Id.* at 6.

²² STATE WATER RESOURCES CONTROL BOARD, 2022 DRINKING WATER NEEDS ASSESSMENT 34 (2022), https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/needs/2022needsassessment.pdf.

²³ CAL. HEALTH & SAFETY CODE § 116681 (2022); CAL. HEALTH & SAFETY CODE § 116682 (2022).

²⁴ CAL. HEALTH & SAFETY CODE § 116275 (2019); CAL. HEALTH & SAFETY CODE § 116686 (2019).

²⁵ CAL. HEALTH & SAFETY CODE § 116766 (2022).

disproportionate environmental burdens in the state by assisting with providing safe drinking water in every California community.”²⁶

II. THE FOUNDATION OF THE AOKI WATER JUSTICE CLINIC

According to the Water Board, more than a million people in California were exposed to unsafe drinking water from the tap in their homes and schools last year.²⁷ This problem can be found in nearly every part of the state, but areas like the San Joaquin Valley and Salinas Valley are disproportionately impacted due to reliance on groundwater contaminated by the overuse of fertilizer in irrigated agriculture.²⁸ Arsenic and nitrate, two of the primary drinking water contaminants in the state, disproportionately affect low-income and Latino communities.²⁹ Moreover, in the midst of California’s historic drought in 2014–15, many families and communities found themselves without water at all.³⁰

California’s water governance is a patchwork of legal structures composed of both public and private entities, small and large.³¹ Many rural communities in the San Joaquin Valley rely on small groundwater systems for their potable water supply.³² In addition, “state small water systems,”

²⁶ State Water Resources Control Board, *SAFER Program: Frequently Asked Questions*, https://www.waterboards.ca.gov/drinking_water/programs/safer_drinking_water/docs/20200416_safer_faq.pdf.

²⁷ STATE WATER RESOURCES CONTROL BOARD, *supra* note 22, at 34; CAL. HEALTH & SAFETY CODE § 116765 (2020).

²⁸ UC DAVIS CENTER FOR WATERSHED SCIENCES, *ADDRESSING NITRATE IN CALIFORNIA’S DRINKING WATER: WITH A FOCUS ON TULARE LAKE BASIN AND SALINAS VALLEY GROUNDWATER 3* (2012), <http://groundwaternitrate.ucdavis.edu/files/138956.pdf>; see *Monterey Coastkeeper v. State Water Resources Control Bd.*, 28 Cal. App. 5th 342, 346 (2018).

²⁹ LEGISLATIVE ANALYST’S OFFICE, *EXPANDING ACCESS TO SAFE AND AFFORDABLE DRINKING WATER IN CALIFORNIA, A STATUS UPDATE 6–7* (2020).

³⁰ Between 2012 and 2016, more than 2,500 domestic wells failed, primarily in low-income communities of color in the San Joaquin Valley. BOSTIC ET AL., *supra* note 5, at 6.

³¹ Camille Pannu, *Drinking Water and Exclusion: A Case Study from California’s Central Valley*, 100 CAL. L. REV. 223, 256 (2012) (listing examples of public and quasi-public governance districts). According to the Water Board, California has over 7,000 public water systems. STATE WATER RESOURCES CONTROL BOARD, *supra* note 22, at 28.

³² LONDON ET AL., *supra* note 9, at 13.

which serve between 5 and 14 connections, are not regulated by the Water Board but are overseen by county health officers.³³ Although these small systems may maintain independence and autonomy over their water systems, they are also vulnerable to water contamination through human sources, such as nitrate contamination from fertilizer.³⁴ Finally, between 1.5 and 2.5 million California residents rely on domestic wells, which are not regularly monitored by the federal or state government.³⁵

Because of California's patchwork water management system, there is no uniform solution for California's water needs. Finding solutions — including solutions for the poorest communities — is a crucial issue, however, especially given California's recurring droughts and the increasing impact of climate change on the state.

In 2013, Professor Angela Harris became the inaugural director of the Aoki Center for Critical Race and Nation Studies (“Aoki Center”) at King Hall.³⁶ Under her direction, the Aoki Center sought to develop a clinical component to foster its work, which would allow students to understand and apply critical race theory ideas in a real-world context, while contributing to the quality of life of underserved communities. The clinical projects would create opportunities for law students to provide effective representation for these communities.

The 2014 passage of Proposition 1, which authorized the Water Board to fund technical assistance programs under the state's drinking water program, provided a potential pathway for change.³⁷ In public comments submitted to the Water Board, Professor Harris advocated that this new technical assistance program should include funding for legal assistance for community water solutions for small disadvantaged communities.

³³ LEGISLATIVE ANALYST'S OFFICE, *supra* note 29, at 4.

³⁴ UC DAVIS CENTER FOR WATERSHED SCIENCES, *supra* note 28, at 3 (in study area, cropland contributed 96 percent of nitrate contamination to groundwater).

³⁵ LEGISLATIVE ANALYST'S OFFICE, *supra* note 29, at 4.

³⁶ The Aoki Center was established to honor the life and work of Keith Aoki, a faculty member at King Hall who died an untimely death in 2011. Professor Aoki was an accomplished and respected scholar who used words, art, music, and engagement to create a significant body of work in civil rights, critical race theory, intellectual property, and local government law.

³⁷ LEGISLATIVE ANALYST'S OFFICE, *supra* note 15.

In 2014, Professor Harris met with Laurel Firestone, the co-executive director at Community Water Center (“CWC”), to discuss potential collaboration on projects. The CWC is a well-established nonprofit organization with the mission to act as a “catalyst for community-driven water solutions through organizing, education, and advocacy in California.”³⁸ Professor Harris also met with Pearl Kan, King Hall class of 2013. With funding from Equal Justice Works, Ms. Kan had joined California Rural Legal Assistance, Inc. (“CRLA”) in 2013 to work on issues of nitrate contamination in the Salinas Valley. Under the supervision of Professor Harris, King Hall students began working on a number of projects with CWC and CRLA.

In one of these projects, Vanessa Lim, King Hall class of 2015, conducted a needs assessment, involving both legal research and interviews with local advocates. Ms. Lim drafted a working paper outlining the legal problems facing Californians served by small water systems, compiling the resources available to them, and recommending further projects. This study served as a foundation for the potential development of a legal services clinic for these small systems.³⁹

In 2016, Professor Harris, collaborating closely with Laurel Firestone of CWC, submitted a grant proposal to the Water Board to fund the establishment of a new King Hall environmental justice clinic. The proposal built upon Vanessa Lim’s needs assessment in which Ms. Lim observed:

- The lack of available legal information imposed barriers to compliance with water quality standards and legal requirements of local governance structures;
- A lack of compliance with water quality standards and legal requirements of local governance structures increased costs for disadvantaged communities by exposing them to fines for failure to comply with rules;
- These communities were also denied access to potential state funding due to a failure to comply with corporate formalities and a lack of information about the requirements for applications;

³⁸ See Community Water Center, *Mission + History* (2022), <http://www.communitywatercenter.org/history>.

³⁹ Vanessa Lim, *Minding the Gap: Increasing the Accessibility of Legal Information and Assistance to Empower Communities and Implement California Water Law and Policy to Increase Clean Water Access For Disadvantaged Communities*, WILLAMETTE ENVTL. L.J. 35 (Fall 2015).

- The lack of legal information hindered public participation, accountability, and the community's ability to effectively manage its water resources;
- Information about legal duties of local governing agencies is important because it enables communities to meaningfully participate in making important decisions about water resource management that impact them;
- The lack of legal information inhibited the ability of communities to exercise local control over water resource management and increased the financial barriers to clean water solutions;
- Even when legal information was available, it was either not easy to obtain or overly complicated and technical;
- Finally, relevant information was often available only in English or online in a state where more than 43 percent of residents spoke a language other than English at home and where many rural communities did not have access to high speed Internet.⁴⁰

In light of these myriad barriers, Professor Harris emphasized in the grant proposal to the Water Board that communities needed legal assistance and advocates to achieve long-term drinking water solutions. This approach takes into account that “[i]n the long run, true *water justice* requires sustainability, and this necessitates that impacted residents become empowered to assert themselves in the water policymaking arena and to influence decisions about water resources and water services that impact their community.”⁴¹ After review, the Water Board awarded a grant to UC Davis in November 2016, agreeing to fund the Clinic’s work to provide legal technical assistance to small disadvantaged communities to develop and implement their capital improvement projects. Subsequently, King Hall established the Clinic and hired Camille Pannu as the inaugural director for the Fall 2017 term.

⁴⁰ *Id.* at 54–56.

⁴¹ Rose Francis & Laurel Firestone, *Implementing the Human Right to Water in California’s Central Valley: Building a Democratic Voice through Community Engagement in Water Policy Decision Making*, 47 WILLAMETTE L. REV. 495, 519 (2011) (italics in original).

III. THE AOKI WATER JUSTICE CLINIC'S WORK

The Clinic combines transactional law, policy advocacy, and strategic research to ensure that low-income California communities receive clean, safe, and affordable drinking water. It is the first law school clinic of its kind in the country.⁴² This Section will briefly describe the seminar component of the Clinic and then address the Clinic's practice. The Section will conclude with some observations by Clinic students about their experiences.

A. THE SEMINAR

The Clinic is designed as a one-semester course for second- or third-year law students; students can register for a second semester to continue to work on assigned matters. The Clinic's work spans the intersection of environmental and transactional law, but some students have not taken any survey courses in those areas when they register for the Clinic. Consequently, the seminar component necessarily covers a broad range of topics to provide the students with a framework to recognize and analyze the problems that our Clinic's projects will present. Because our work focuses on disadvantaged communities, we introduce concepts of community lawyering and the environmental justice movement.⁴³ To understand the current, inequitable water delivery system in California, we discuss the historical roots of discrimination in our state such as redlining, exclusionary zoning, racially restrictive covenants, and

⁴² In applying transactional lawyering to address the effects of poverty and discrimination, the Aoki Water Justice Clinic follows the path of Professor Susan R. Jones who recognized that law schools can serve as centers of "action research," probing "solutions to poverty through active exploration of social problems." Gregory E. Louis, *Bridging the Two Cultures: Toward Transactional Poverty Lawyering*, 28 *CLINICAL L. REV.* 411, 420–21 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4106798; Susan R. Jones, *Alleviating Poverty: What Lawyers Can Do Now*, *HUM. RTS.* 11 (August 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/alleviating_poverty.

⁴³ Paul R. Tremblay, *Counseling Community Groups*, 12 *CLINICAL L. REV.* 389 (2010), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1289&context=lsfp>; Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy*, 14 *VA. ENVTL. L.J.* 688 (1995); *The Mother Earth Podcast: Dr. Robert Bullard* (June 11, 2020), <https://www.motherearthpod.com/drbullard>.

discriminatory county planning and spending policies.⁴⁴ Turning to the substantive law, the seminar reviews the requirements of the federal Safe Drinking Water Act and California's efforts to implement it.⁴⁵ In a state served by over 7,000 water systems, we examine state laws governing special districts, the taxation authority of public agencies, and public meeting laws.⁴⁶ Because so many rural communities rely on groundwater as their sole source of drinking water, we address the passage and implementation of the Sustainable Groundwater Management Act.⁴⁷ Finally, the seminar seeks to demystify the drafting of corporate documents, contracts, and easements so that the students can move beyond a tentative grasp of first year doctrinal law classes to the practical application of these legal concepts.⁴⁸

⁴⁴ Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008), <https://www.uclalawreview.org/cities-inside-out-race-poverty-and-exclusion-at-the-urban-fringe>; Camille Pannu, *Bridging the Safe Drinking Water Gap for California's Rural Poor*, 24 HASTINGS ENVTL. L.J. 253 (2018), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1419&context=hastings_environmental_law_journal; RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

⁴⁵ James E. Salzman, *The Past, Present and Future of the Safe Drinking Water Act*, UCLA SCHOOL OF LAW, PUBLIC LAW RESEARCH PAPER No. 19-37 (2019), <https://ssrn.com/abstract=3463976>; California State Water Resources Control Board, *Safe and Affordable Funding for Equity and Resilience* (2022), <https://www.waterboards.ca.gov/safer>.

⁴⁶ SENATE LOCAL GOVERNMENT COMMITTEE, *WHAT'S SO SPECIAL ABOUT SPECIAL DISTRICTS?: A CITIZEN'S GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA* (2010); LEAGUE OF CALIFORNIA CITIES, *PROPOSITIONS 26 AND 218 IMPLEMENTATION GUIDE* (2021); LEAGUE OF CALIFORNIA CITIES, *OPEN & PUBLIC V, A GUIDE TO THE RALPH M. BROWN ACT* (2016).

⁴⁷ WATER FOUNDATION, *GROUNDWATER MANAGEMENT AND SAFE DRINKING WATER IN THE SAN JOAQUIN VALLEY: ANALYSIS OF CRITICALLY OVER-DRAFTED BASINS' GROUNDWATER SUSTAINABILITY PLANS* (2020); Kristin B. Dobbin, "Good Luck Fixing the Problem": *Small Low-Income Community Participation in Collaborative Groundwater Governance and Implications for Drinking Water Source Protection*, 33 SOC'Y & NAT. RESOURCES 1468 (2020); BOSTIC ET AL., *supra* note 5.

⁴⁸ TINA L. STARK, *DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO* (2d ed. 2013); KENNETH A. ADAMS, *A MANUAL OF STYLE FOR CONTRACT DRAFTING* (4th ed. 2018); CONTINUING EDUCATION OF THE BAR, *ADVISING CALIFORNIA NONPROFITS* (3d ed. 2021).

B. THE CLINIC'S PRACTICE

Under the supervision of the Clinic director and a staff attorney, law students deliver direct legal assistance to clients, working with these communities to navigate funding opportunities, form new management entities, merge water systems, draft agreements, bring systems into compliance, and strengthen governance. The Clinic also offers community trainings, and develops templates and guides for community advocates. Pursuant to the Water Board's 2016 grant, the Clinic performs a broad range of tasks, including the following:

- **COUNSELING AND LEGAL ADVICE TO WATER SYSTEMS IN DISADVANTAGED COMMUNITIES:** about federal, state, and local statutes, regulations, and policies concerning topics such as drinking water, land use, groundwater, the corporate form, tax obligations, ethics laws, and the human right to water.
- **TRANSACTIONAL WORK:** to make a community eligible for grant funding for water system improvements. These tasks include, but are not limited to, consolidating with a nearby system, establishing an intertie connection, establishing a corporation (e.g., drafting articles of incorporation and bylaws), drafting and reviewing planning and construction contracts, submitting applications for tax-exempt status, developing an option contract to help a community drill a test well, and drafting and reviewing contracts to buy water or property rights.
- **NEGOTIATIONS:** on behalf of small water systems (e.g., to consolidate into a nearby system, buy water, and purchase land or an easement).
- **LOCAL AGENCY WORK:** to advise local agencies on compliance with relevant agency law (such as the Brown Act, Proposition 218, Local Agency Formation Commission procedures, ethics laws, or the Safe Drinking Water Act).
- **LOCAL POLICY WORK:** to help water systems establish local rate policies, shut-off policies, or well drilling policies or ordinances.
- **PREPARE LEGAL DOCUMENTS:** required to submit Drinking Water and Clean Water State Revolving Fund funding applications for the planning and construction of capital improvement projects.

The following four matters illustrate the types of issues handled by the Clinic.

LAKE COUNTY INTERTIE AGREEMENT — California has faced an increased danger from wildfires in the past decade. In Lake County, three wildfires caused widespread devastation in 2015 and then the Clayton Fire forced residents to evacuate in the towns of Clearlake and Lower Lake in August 2016.⁴⁹ In the aftermath of these emergencies, the Clinic assisted three small water companies in Lake County to negotiate and draft an Intertie Agreement among the companies. The proposed interties will allow each water system to take delivery of treated water from one of the other companies in an emergency. This construction will enhance each system's operating flexibility and protect against water supply shortages within their service areas. In the process of reviewing the companies' water rights, however, the Clinic discovered an obstacle — two of the water systems had existing water sales agreements with a Yolo County water agency that did not allow out-of-district water transfers by the water companies. To resolve this issue for the two companies, the Clinic negotiated an amendment to the water sales agreements to permit a water transfer in an emergency.

SAN JOAQUIN COUNTY CONSOLIDATION — Some mobile home park owners operate their own wells to provide drinking water to their tenants within the park. In San Joaquin County, two mobile home parks relied on wells contaminated with arsenic. The County Health Department issued a compliance order to these companies, directing them to comply with the MCL for arsenic. For these small water systems, a treatment system to remove arsenic would be too expensive and complicated to build and operate. In general, small public water systems often struggle to pay for infrastructure or its maintenance due to poor economies of scale (i.e., a small ratepayer base) and a lack of technical staff. As a result, the Water Board supports consolidations when it is feasible.⁵⁰ In this instance, the Clinic assisted a nearby city that was willing to extend its water service

⁴⁹ See Guy Kovner & Christi Warren, *Lower Lake Burns as Clayton Fire Forces Evacuation of Clearlake Residents*, THE [SANTA ROSA] PRESS DEMOCRAT, August 14, 2016, <https://www.pressdemocrat.com/article/news/lower-lake-burns-as-clayton-fire-forces-evacuation-of-clearlake-residents>.

⁵⁰ See State Water Resources Control Board, *Drinking Water Partnerships and Consolidation* (2022), https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html.

to these mobile home parks, which are located outside the city's limits in the unincorporated county. This project required the Clinic to draft and negotiate an annexation agreement between the city and the mobile home park owners, and to assist the city in its application to the Water Board to pay for installation of the water mains to extend the city's drinking water service to the mobile home park residents.

TULARE COUNTY APPLICATION FOR TAX EXEMPTION — Small water companies are often beset by managerial and technical difficulties as well as water quality issues. A small water company in Tulare County relied on a single well contaminated by nitrates. An adjacent city indicated its willingness to annex the water company's existing service area if the company would upgrade its existing distribution system. Before it could qualify for a Water Board construction grant to improve its distribution system, the company first needed to apply for state and federal tax exemptions. When it applied for the exemptions, the company found that its corporate status had been suspended due to a company officer's failure to file tax returns. In addition, the secretary of state notified the company that it did not qualify as tax exempt because it was organized as a for-profit corporation. The Clinic assisted the company to amend its articles of incorporation to qualify as a nonprofit mutual water company and submitted the restated articles to the secretary of state for approval. After the Clinic advised the company on the amendment of its bylaws, we submitted the amended corporate documents and delinquent tax returns to the Franchise Tax Board and the IRS, which then approved tax-exempt status for the company. The restoration of its corporate and tax-exempt status will allow the water company to qualify for a Water Board grant under the SAFER Program to upgrade its infrastructure. As a result of these system improvements, the neighboring city will agree to annex the small water company's service area and serve these residents with potable water.

TULARE COUNTY EASEMENT — Small water companies in the San Joaquin Valley often need extensive upgrades to their water treatment and distribution systems to comply with state and federal drinking water requirements but are not able to pay for the cost of these upgrades due to both their small ratepayer base and the predominantly low-income residents of the community. One small Tulare County water company had

applied to the Water Board for construction funding to improve its distribution system and install a larger water storage tank to provide additional resiliency for the system in drought conditions. In order to obtain grant funding from the Water Board, the water company had to qualify as tax exempt to avoid a tax penalty. With the Clinic's assistance, the company obtained state and federal tax exemptions. In conferring with the system's operator, we confirmed that construction of the new tank would also require the company to obtain additional storage area and road access to the storage area for maintenance of the tank. The Clinic met with the owners of an adjacent parcel to discuss the proposed project. The project was delayed due to a misunderstanding of the terms of an existing easement and the proposed easement. After meeting with the company's operator, the Clinic explained the terms of the scope of the existing easement to the adjacent landowners, and then negotiated the terms of a new easement and a quitclaim deed to extinguish the existing easement.

In each of these matters, the Clinic students worked on teams and interacted frequently with the company representatives, who often run these small water companies as volunteers. The students learned to persist under adverse conditions, advising their clients to manage unexpected twists in the course of the cases. As Professor Louis remarked in a similar context, "if law students contribute simply by being community navigators — that is, going out into communities and helping small business owners navigate bureaucracy — then they will have advanced the struggle for equity."⁵¹

C. STUDENT EXPERIENCES

In the *Secret of Happiness*, Joel ben Izzy recounts a tale about Nasrudin, a teacher and scholar "known as much for his wisdom as his foolishness."⁵² Nasrudin explained to a student that "the secret of happiness is good judgment." "But," the student asked, "how do we attain good judgment?" "From experience." "Yes," said the student. "But how do we attain experience?" "Bad judgment."⁵³

⁵¹ Louis, *supra* note 42, at 444.

⁵² JOEL BEN IZZY, *THE BEGGAR KING AND THE SECRET OF HAPPINESS* 206 (2003).

⁵³ *Id.* at 206–7; see also <https://www.storypage.com>.

As Professor Mlyniec stated, “clinical teaching is personal and designed to accept students where they begin and to maximize their potential to learn.”⁵⁴ In this context, supervisors “must be intentional and transparent about their intervention . . . to make the student aware that the collaborative nature of clinic writing gives both the supervisor and student some degree of ownership of the final product.”⁵⁵ While supervision remains the key to clinical education, the basic tenets of clinical education require the *students* to assume the role of a lawyer and to perform those tasks in the context of real projects.⁵⁶ In short, we all must have the opportunity to err, to reflect, and to learn from our mistakes.⁵⁷

In this section, three students, each of whom participated in the Clinic for two semesters, provide a synopsis of their experiences. As the students explain, they worked in the Clinic with a team of other law students and a supervising attorney, learning to handle novel and complex legal issues. The Clinic affords the students the opportunity to draft clear and concise legal documents, to communicate with busy and distracted clients, to negotiate and mediate between opposing parties, and to overcome communication gaps. Through the Clinic’s work, they learn to be nimble and to provide competent representation to underserved communities as ethical attorneys.⁵⁸

⁵⁴ Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 511 (2012), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1773&context=facpub>.

⁵⁵ *Id.* at 524.

⁵⁶ *Id.* at 517, 536.

⁵⁷ In his “Lessons for Action,” Professor Isao Fujimoto advised his students: “Reflect on what you do: Experience is not what you did or what happened to you. Experience is what you do with what you did or what happened to you.” DANIEL J. O’CONNELL & SCOTT J. PETERS, *IN THE STRUGGLE: SCHOLARS AND THE FIGHT AGAINST INDUSTRIAL AGRIBUSINESS IN CALIFORNIA* 230 (2021).

⁵⁸ The ABA’s McCrate Report established four values that lawyers should possess when they enter the practice of law: (1) Provision of competent representation; (2) Promotion of justice, fairness, and morality; (3) Improvement of the profession; and (4) Professional self-development. Mlyniec, *supra* note 54, at 538. As Professor Mlyniec reminded us, “The privilege and responsibility of an academic is to use the case or project to explore the larger questions about the role of a lawyer, the process of lawyering, lifetime learning, personal development and growth, and the values that support the profession.” *Id.* at 571.

1. *“The Clinic taught me to be persistent to help those in need of assistance, while remaining compassionate and pragmatic.”*

Working with the Clinic has been the most challenging, yet rewarding experience I have undergone in law school so far. I have been passionate about climate change and the protection of our natural resources from a young age. Because of this, I was drawn to the Clinic for its commitment to helping low-income communities throughout California receive access to clean and safe drinking water. I was also eager to get hands-on experience on transactional projects, and observe the dynamics between different water companies.

During the past two semesters, I had the opportunity to collaborate with team members on a variety of cases, while learning about water law, disadvantaged communities, and the intersection between the two. In one of the cases, I helped a small water company in Southern California with non-drinkable, contaminated water merge with a neighboring system in order to comply with the state’s drinking water standards. In the fall semester, I collaborated with another student to draft a merger agreement for the two water companies. By doing so, I was able to bridge the knowledge I acquired through my coursework with practical experience. Although I had studied mergers in my Business Associations class, I did not learn how they apply to water companies. Furthermore, drafting a legal document differs greatly from the theoretical study of the subject matter.

Having witnessed the struggles faced by small water companies in rural areas that have been overlooked by the system, I chose to extend my time with the Clinic once the semester was over, to contribute some sort of stability to already precarious situations. The second semester presented new challenges that further highlighted how simple things such as the lack of effective communication can impact people’s ability to access drinkable water. The Clinic taught me to be persistent to help those in need of assistance, while remaining compassionate and pragmatic. This time has been instrumental in preparing me for success in my future law career, by giving me the tools to develop practical skills I would not have acquired otherwise.

— *Chiara Veronesi, Class of 2023*

2. *“The Clinic has also taught me to embrace uncertainty and to systematically wade through difficult issues to develop competence.”*

My work in the Clinic for two semesters was one of my law school highlights. I had the opportunity to interact with impactful environmental justice groups and to work on a variety of cutting-edge issues. My Clinic experience made me a more determined and versatile problem solver and shaped my professional identity.

During my first semester, I contributed to a near final draft of an Intertie Agreement, which was designed to establish emergency connections for three water systems in Lake County. Once built, the intertie system will strengthen Lake County’s resiliency regarding wildfires and droughts. It was satisfying to work at the forefront of a project that will create a lasting benefit by helping vulnerable communities adapt to the challenges of climate change.

I worked on two interesting cases in the second semester. In the first matter, we examined the technical, managerial, and financial capacity of a small, rural water company as it applied for Water Board funding. In a second project, we assisted a water system administrator assume her duties in managing a small rural water company during a consolidation with a nearby city. Because this is one of the first public administrator cases, we literally got to see the law develop.

At the Clinic, I connected with dedicated public interest groups. For example, we worked with a grassroots organization that has transformed community life in farmworker communities in the Eastern Coachella Valley. I also assisted a community group to evaluate legislative proposals regarding equitable repayment plans to increase water affordability during the Covid-19 pandemic. Again, thanks to being part of the Clinic, I gained insight into key legal and equitable issues of our time.

Overall, I enjoyed the collaborative aspect of the clinical work and the experience of working with fellow students, the Director, and our clients as a team. The traditional law school environment is more individually focused, which does not accurately reflect most attorneys’ legal practices. The Clinic has also taught me to embrace uncertainty and to systematically wade through difficult issues to develop competence. Generally, the Clinic provides legal assistance to communities on specialized and technical issues to push projects forward. Tackling difficult and unfamiliar tasks

is a common theme of the Clinic. This problem-solving aspect of clinical work greatly strengthened my lawyering skills and was one of the most rewarding aspects of my law school experience.

— *Christian Smit, Class of 2022*

3. *“The Clinic reinvigorated my passion to study law and made me realize the true value of my legal education.”*

The Clinic has sharpened my legal skills, given me practical work experience, and solidified my love of water law. One of my cases involved a community services district and a Native American Tribe working to address the various issues that plague the water system. In that case, I researched and drafted memoranda involving access methods to tribal land, participated in negotiations among the parties, and strategized with my peers on ways to effectively tackle the project’s issues. I’ve also worked on other projects that involve entirely different concerns and skillsets. For example, the Clinic recently took on a unique case that requires us to provide legal assistance for a water system administrator. This new project included drafting a technical assistance work plan that lays out the Clinic’s tasks, analyzing the Water Board’s evolving standards for water system administrators, and clarifying the necessary steps for dissolution of a California nonprofit corporation. The Clinic has also allowed me to draft consolidation agreements, assist with filing easements with a county recorder’s office, and act as a liaison with the Bureau of Indian Affairs, among other things.

While improving legal skills and obtaining practical work experience are the most obvious benefits of working in the Clinic, there are other subliminal advantages as well. Not only does the Clinic allow students to experience the unique obstacles faced in water law, but it also gives them the opportunity to provide legal assistance to those in poor, disadvantaged communities across California. Whether it be assisting a Native American tribe with providing water to its community, or consolidating two dilapidated water systems into a single, working system, the Clinic provides a way to cultivate these experiences. In sum, the Clinic has reinvigorated my passion to study law and made me realize the true value of my legal education.

— *Matthew Navarrette, Class of 2022*

IV. CONCLUSION

Safe drinking water should be a human right equally available to all communities. Yet lack of access to safe and affordable drinking water continues to severely impact low-income and Latinx communities in California, particularly in the San Joaquin Valley.⁵⁹ California has taken an important step to address this human rights problem by funding the Safe and Affordable Drinking Water Fund and establishing the SAFER program. However, realization of the human right to water is not simply a question of infrastructure that a benevolent government can dole out to its communities and then record as another “mission accomplished” on a webpage.⁶⁰ “Rather, it is an ongoing process”⁶¹ in which lawyers and law students can serve as a “tool for communities to strengthen their own voice and strengthen their own power around these issues.”⁶² As the Honorable Cruz Reynoso stated: “Overcoming California’s water challenges will undoubtedly require a change in how water policies are made and who is making them. As Latinos, we will have to take our place at the table.”⁶³ Through the work of the Aoki Water Justice Clinic, we seek to train future California water attorneys to listen, learn from, and respond to these communities in order to build their capacity to address their pressing needs.

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⁵⁹ LEGISLATIVE ANALYST’S OFFICE, *supra* note 29, at 6–7.

⁶⁰ Rose & Firestone, *supra* note 41, at 512, 521.

⁶¹ *Id.* at 521.

⁶² Symposium, *Environmental Justice: Access to Clean Drinking Water*, 57 HASTINGS L.J. 1367, 1379 (2006), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3636&context=hastings_law_journal.

⁶³ Rose & Firestone, *supra* note 41, at 521 n.102, *quoting* The Honorable Cruz Reynoso, *Foreword* to Paola Ramos, *Latino Issues Forum, Promoting Quality, Equity, and Latino Leadership in California Water Policy: An Introduction to Water Issues Impacting Latino Communities in California* 6 (June 2003). The Honorable Cruz Reynoso served as the first Latino justice on the California Supreme Court from 1982–86. He also taught as a professor at the University of New Mexico (1972–76), UCLA (1991–2001), and King Hall (2001–06). As a professor and professor emeritus at King Hall, Justice Reynoso remained an active faculty member at the Aoki Center and the law school until shortly before his death at age 90 in 2021. See <https://www.ucdavis.edu/news/cruz-reynoso-uc-davis-and-california-icon-dies-90>.