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Environmental Law and Justice Clinic Fall 2012 Report

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Founded in 1994, the Environmental Law and Justice Clinic serves the dual mission of training law students to be effective and ethical advocates and assisting low-income communities and communities of color to reduce the disparities of pollution. The Clinic is staffed by ten to twelve law students, two full-time professors, and a Graduate Fellow. The State Bar certifies the law students to perform lawyerly tasks under the supervision of their professors.

The Clinic's 2012 work focused primarily on advocating for safe drinking water, ensuring a renewable energy future, and reducing the disparities of air pollution. This Fall 2012 report highlights some of our work and accomplishments.

Collaborating with Diverse Groups to Bring Safe Drinking Water to Residents Reliant on Contaminated Water Sources

Access to clean drinking water is a basic human necessity and a mark of a developed society such as ours. And yet pollution and naturally-occurring chemicals continue to contaminate much of California's drinking water. According to a recent report, over 20 million California residents rely on contaminated water for their daily needs. This contamination has serious and costly health and economic impacts. Drinking contaminated water not only raises serious public health concerns, but communities reliant on contaminated sources must either buy bottled water for their daily needs or pay to fund costly water treatment. These burdens fall significantly on communities that are already vulnerable – those who struggle with poverty, existing health conditions, and exposure to other environmental toxins and lack access to health information or care.

In August and September of this year, the Clinic took two new cases that address safe drinking water challenges in farming and low-income communities. In one case, we are collaborating with Community Legal Services in East Palo Alto (CLSEPA) to address two contaminated groundwater wells in East Palo Alto, which supply water to nearly 3,000 residents. East Palo Alto is more than 60% Latino, and 35% of the city's population (more than twice the national average) has received less education than is necessary to achieve a high school diploma. The case came to CLSEPA as a landlord-tenant matter, and CLSEPA then contacted us to seek our expertise on environmental laws governing safe drinking water. We have plans to continue this collaboration to address the problem at its source, and to include a community education component to ensure that the clients can reduce their risks from drinking contaminated water.

In another case, we addressed the impact of agricultural runoff in nitrate pollution in the Salinas Valley. We collaborated in this work with the Environmental Justice Coalition for Water and California Rural Legal Assistance. Our collaboration is expected to help expand the Clinic's work in this important subject area as groups in California become familiar with the Clinic's services.



Reducing Health Risks from Power Plant Pollution and Greenhouse Gas Emissions

Environmental justice communities disproportionately suffer from fossil-fuel based energy generation. In addition to being harmed from the impacts of resource extraction, communities living near power plants suffer when these plants combust fossil fuels to generate power. Burning fossil fuels not only produces toxic air and water pollution, but also greenhouse gases that are responsible for climate change. In recognition that California can do much more to reduce pollution from energy generation and that toxic pollution and climate change disproportionately affect low-income communities and people of color, these communities have begun to focus on California's energy policy.

The Clinic has been playing a leading role in this forward-thinking work. The Clinic took a leadership role beginning with its work with Pacific Environment several years ago and is now taking a significant role in representing California Environmental Justice Alliance (CEJA). CEJA is comprised of Asian Pacific Environmental Network, Center for Community Action and Environmental Justice, Center on Race, Poverty, and the Environment, Environmental Health Coalition, Communities for a Better Environment, and People Organizing to Demand Environmental & Economic Rights. The Clinic is counseling CEJA on strategy and representing the group in policy litigation targeted at increasing energy efficiency and conservation and replacing fossil-fuel based energy generation with renewable energy. These cases will shape the energy landscape of California, and indirectly the nation as a whole, as it looks to California for innovation and leadership. Some specifics of the Clinic's work are provided below.

- **Changing Energy Policy to Put Energy Efficiency, Conservation, and Renewables First**

Policy decisions on energy procurement, integration of renewable energy into the grid, and storing energy from renewable sources – so that renewable energy can be used even when the sun is not shining and the wind is not blowing – will have profound impacts on Californians. These decisions are made before the California Public Utilities Commission in its “long-term procurement plan” proceedings. These proceedings tend to be highly technical and fast-paced. Because of their technical and resource-intensive nature, environmental justice groups historically had not been represented in these proceedings until the Clinic began to represent Pacific Environment.

The Clinic achieved two landmark victories in these proceedings this past year. In April, the Commission agreed with us that the existing electricity supply can meet the state's system needs through the year 2020 and ruled that the state did not need energy from new fossil-fuel plants not yet authorized. If our continued work succeeds, this decision will hopefully mean that California's future energy supply



will come from renewable sources after reductions achieved from conservation and energy efficiency are taken into account. This work was done in collaboration with Sierra Club California and Communities for a Better Environment.

This victory followed the Commission's decision in January of this year, in which the Clinic took the lead in enforcing a requirement that the state's three investor-owned utilities were ignoring. The decision confirmed that Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric first must look to energy efficiency, conservation, and renewable development before resorting to fossil-fuel based energy.

- **Providing Expertise to CEJA to Continue to Advocate for Sensible Energy Policies**

The public interest has been generally narrowly represented through consumer advocacy groups in California Public Utilities Commission proceedings. This year, the Clinic began representing CEJA in two Commission proceedings. In one proceeding, we are advocating that proposed fossil-fuel power plants in the San Diego region are not necessary (these facilities are not covered by the decision we already secured that found no need for fossil-fuel procurement). In another proceeding, we will be advocating for better integration of energy generated from renewable sources through energy storage and improvements in the grid. We are also continuing to advocate for transparency in energy procurement in these proceedings.

This work continues to prove challenging – and not only because of its importance to California in general and the environmental justice communities we represent. These proceedings are incredibly work-intensive, requiring multiple voluminous submissions. Our Clinic filed, for example, a nearly 70-page brief in one week, along with several other briefs, comments, and other submissions in the weeks surrounding the briefing. We also submitted hundreds of pages of written testimony and served as the lawyers responsible for several hearings, including a two-week evidentiary hearing on behalf of CEJA.

- **Successful Settlement of a Lawsuit to Compel EPA to Review Opportunities to Reduce Greenhouse Gas Emissions and Toxics from Pulp Mills**

In December 2011, the Clinic filed a lawsuit on behalf of Greenpeace and Port Townsend Airwatchers to compel the U.S. Environmental Protection Agency to review and, if appropriate based on that review, revise pollution rules governing new sources of pollution at kraft pulp mills. This work grew out of a Clinic student's analysis made when we were representing Californians Against Toxics to reduce pollution from a paper mill in Eureka, California. The Center for Biological Diversity joined our effort as co-plaintiff.



In August of this year, EPA agreed to settle the lawsuit through a consent decree. The motion to enter the proposed consent decree has been filed. The settlement, if approved, will require EPA to review pollution rules governing about 120 kraft pulp mills in the nation. The last time EPA reviewed the rules was 1986. We expect that technological improvements made in the intervening years will require a tightening of the rules and nationwide pollution reductions. Opportunities to reduce greenhouse gases are particularly significant as the paper and forest product industry is the third largest consumer of energy, after refining and chemical industries, among the many industrial sectors in the United States.

- **Advocating for Pollution Credits to Be Used for Renewable Energy Project Development Rather Than Ratepayer Refunds**

We provided legal assistance in a California Public Utilities Commission proceeding to Just Transitions Coalition, a geographically broad coalition supporting the members of the Navajo and Hopi Tribes. Just Transitions Coalition seeks to use the proceeds from the sale of pollution credits for renewable energy development on tribal lands. The credits were initially allocated to a California utility but are currently unused due to the closure of a coal power plant. The Tribes were injured by decades of coal extraction on their lands. The coal was transported hundreds of miles using water from the lands, leaving the area's aquifer significantly depleted. Meanwhile, the utility seeks to use the proceeds to pay ratepayers a few cents each. Although the parties had submitted arguments and evidence numerous times since the case was filed in 2006, the administrative judge sought additional filings this year. We hope that this longstanding case is finally decided soon.

Assistance to Communities with Pollution Problems

- **West Berkeley Alliance for Clean Air and Safe Jobs, Berkeley, CA**

We continue to be a legal and technical resource for the West Berkeley Alliance, a grassroots community group working to reduce air pollution from a local steel foundry. We used one of our grants to hire a technical expert to help the West Berkeley Alliance submit comments to the Bay Area Air Quality Management District on a draft rule governing metal melting, processing, and recycling facilities. Five other Bay Area community representatives joined the detailed comments we submitted. Among those groups were Greenaction for Health and Environmental Justice and Global Community Monitor. We also assisted the West Berkeley Alliance in providing information about pollution to community members.



- **Northern California Communities Near Railroad Operations**

We are representing Californians for Alternatives to Toxics in litigation under the California Environmental Quality Act to push for improved environmental analysis of the proposed reopening of a defunct rail line. The rail line, which is between Lombard and Willits in Northern California, is within 500 feet of nine schools, some of which serve low-income families. Concerns include toxic substances present in the rail corridor infrastructure, potential impacts from disturbing the contaminated soils and rail ties during reconstruction, and use of toxics in maintaining the rail lines. The potential for exposing the nearby communities is a significant health concern because some of the same vulnerable populations already suffer from highway traffic pollution. In May of this year, we won a critical motion remanding the case to state court, which can now decide the merits of the case. In August, we successfully opposed a motion to transfer the case out of Marin County Superior Court and won a writ taking that decision up on appeal.

Bay Area Environmental Justice Coalitions

Over the past decade, we have provided significant technical and policy support to several coalitions. In addition to working with CEJA (described above), we currently work with another collaborative:

- **Bay Area Environmental Health Collaborative (BAEHC)**

BAEHC is a group of environmental health and justice organizations engaged in policy advocacy to reduce the cumulative impacts of air pollution throughout the region. The coalition includes People Organizing to Demand Economic and Environmental Rights, Chinese Progressive Association, Greenaction, Hunters View Mothers Committee, Healthy San Leandro, Communities for a Better Environment, West County Toxics Coalition, Breathe California, and Ditching Dirty Diesel. The Clinic has supported BAEHC since its formation. BAEHC currently focuses its efforts on improving the Bay Area Air Quality Management District's regulatory policies. As part of this effort, the Clinic participated in professionally facilitated discussions with the Air District, including the top executive of the organization, to improve the historically poor communications between the agency and grassroots and environmental groups. The Clinic also submitted comments on behalf of BAEHC on the Air District's proposed rules that cover major sources of pollution such as refineries and power plants.



Work of National Scope with Impacts on the Health of Californians

- **Reducing Lead Pollution**

The Clinic was forced to sue the U.S. EPA this March because it had failed to respond to a 2006 petition asking the agency to determine that lead from aviation gasoline poses health hazards and to regulate its use. The lawsuit filed on behalf of Friends of the Earth asks the federal court in the District of Columbia to determine EPA's responsibility. Aviation gasoline used in propeller planes is now the largest source of airborne lead in the nation, and harms people living near general aviation airports. There are seven such airports located on or near the shores of the San Francisco Bay and numerous others in the state. This effort originated with the Clinic's research, and now Earthjustice has joined as co-counsel. In September, the Clinic and co-counsel submitted a brief to the court asking it to rule that EPA has a mandatory duty to make an endangerment determination.

Clinic Faculty Publications Targeted at Issues Affecting Our Client Base

Over the last year, Clinic faculty have written about topics that are important to our client base, from how to enforce the Clean Air Act in The Recorder, a legal newspaper, and academic articles on renewable energy, to articles geared toward social justice advocates. Some of the publications that may be of interest to the public are:

- Deborah Behles, "An Integrated Green Urban Electrical Grid," 36 William & Mary Environmental Law & Policy Review 671 (2012): The energy grid in most urban areas relies on large polluting power plants that distribute energy across long transmission lines. Urban areas can transition away from this dirty, decentralized energy system by integrating conservation measures with renewable energy resources and energy storage. Effective integration of these components can reduce pollution, create economic opportunities, and maintain energy reliability.
- Helen Kang, "Recognizing the Link Among Climate Change, Food, and Poverty," Clearinghouse Review (Sept.-Oct. 2012): Climate change directly affects food security by altering food production and price, which in turn influence how easily low-income families can acquire food. The link among climate change, food, and poverty is essential for policymakers to understand. Explicitly acknowledging this connection will improve government decisions on issues ranging from energy policy to the Supplemental Nutrition Assistance Program. Environmental and antipoverty advocates also must work together to meet the challenges of climate change-induced food insecurity.