



SPRING 2019 / VOL. 1

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HEALTH, CLIMATE, &
EQUITY

BerkeleyLaw
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director's corner

CLAUDIA POLSKY

Director & Assistant Clinical Professor of Law



Welcome to Semester 6 of UC Berkeley's Environmental Law Clinic, and its first newsletter! We've been so busy advocating for the environment in courts, legislatures, and agencies, while creating institutional systems and hiring staff, that we've lacked a spare moment to memorialize our adventures. Happily, the delay means that early projects have now yielded real-world results, which we're delighted to report.

ELC has committed to two advocacy realms: environmental health ("EH," which I lead) and environmental justice ("EJ," led by Roger Lin, Staff Attorney). These areas overlap, but are distinct.

Our **environmental health docket** encompasses, for example, human exposure to toxic chemicals at hazardous waste sites in low income and minority communities, but also addresses health issues such

as exposure to cell phone radiation that affect the population at large. Our goal is to **maximize environmental health protection**, through work with a wide variety of individual, nonprofit, and government clients.

Our complementary **environmental justice docket** involves representing community groups and coalitions, and has as a goal **the shifting of power to the marginalized**. One could say that our EH docket aims for scale of environmental impact, while our EJ docket aims for scale of structural change. Both are critical, and urgent.

In this newsletter issue, we highlight student-led victories related to radiation, toxics, and the right to water, and preview the climate justice issues we'll explore in our Fall issue.

Enjoy!

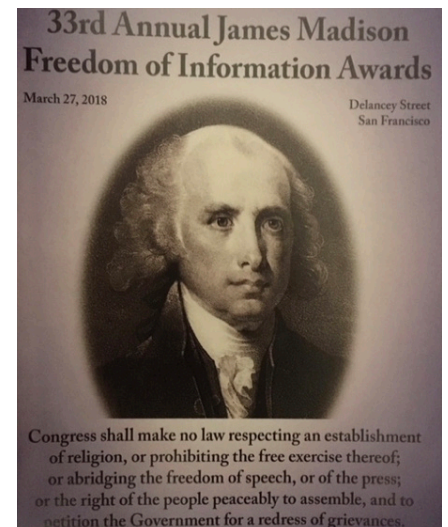
- Claudia

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Case victory! Cell phones & health



Dr. Joel Moskowitz, UC Berkeley



In 2014, the number of cell phones globally surpassed the human population. Although questions remain about the scale of risk from cell phone electromagnetic field (EMF) radiation, more than 2000 scientific papers have called for health warnings and more stringent regulation. The United States is among the least health-protective nations in its approach to cell phone EMF. Children are at greatest risk, due to thinner skulls and decades of projected exposure.

We are presently conducting a population-scale EMF radiation exposure experiment. ELC clients are fighting for good science, government transparency, and precautionary policy.

In its first court case, **ELC successfully represented UC Berkeley health researcher Dr. Joel Moskowitz in litigation** under the California Public Records Act. Our suit forced the California Department of Public Health to disclose the contents of a long-withheld EMF guidance document.

The document tells cell phone users how best to protect themselves from device radiation. We believe the Department's timidity in releasing it stemmed from the extreme litigiousness of the cell phone industry, which has vigorously challenged all

efforts to publicize or regulate cell phone EMF radiation levels.

Our clinic project involved five students working across three semesters, and enabled them to: work with a live client; draft a public records request; file a petition and merits brief in state court; prepare deposition questions, and craft deposition strategy; attend a court hearing; observe client-media interaction; and experience the thrill of winning a morally righteous case that was challenging on the facts and the law.

The publicity surrounding this case and its impacts have been considerable. Our win received front-page, above-the-fold coverage in the San Francisco Chronicle, a TV story on CBS, and public radio coverage. It has since has been the subject of 200+ news stories in 48 countries.

This coverage has in turn had salutary multi-local policy effects. In California,

the Department of Public Health has reversed its official stance on cell phone radiation, now stating that health risks are potentially serious enough that the public should, through official guidance documents, be informed about means of mitigation.

In March 2018, the Northern California Society of Professional Journalists honored our client with a James Madison Freedom of Information Award for his tenacity (culminating in ELC students' legal work) to daylight the cell phone guidance document.

ELC has received calls from around the world for assistance with EMF radiation matters. We are consulting with scientists and activists to determine next steps.

Administrative victory! Climate justice



*ELC and partners obtain **\$56 million in energy investments in disadvantaged rural communities.***



ELC student Luna Martinez Gomez (podium)

Kayode Kadara (second from left) is a long-time resident of Allensworth in the San Joaquin Valley. In 2014, Kayode and other Valley residents approached the State Legislature with a clear problem: they had no affordable energy. Allensworth, decades ago redlined from economic investment, has no access to natural gas. Residents instead stay warm, cook, or heat water with propane or wood burning. Worse yet, the local pollution from these inadequate and dirtier energy sources adds to the extreme air pollution in the San Joaquin Valley— an area in severe nonattainment of federal air quality standards that suffers some of the worst air quality in the nation.

In response to these residents' advocacy, the Legislature passed Assembly Bill 2672, requiring the California Public Utilities Commission to explore the economic feasibility of affordable energy solutions in Allensworth and other disadvantaged communities in the San Joaquin Valley. The CPUC assigned the matter to Commissioner Martha Guzman-Aceves, who, after identifying 170 similarly situated communities, initiated a "pilot track" of the proceeding to perform this analysis.

The Pilot Team was soon formed from three San Joaquin Valley community-based-organizations — the Center on Race, Poverty and the Environment, Leadership Counsel for Justice and Accountability, and Self-Help Enterprises. It was tasked with exploring how to minimize barriers to new energy resources in disadvantaged communities and advocating for socialization of costs so that participating residents would see improvements to their local air quality and economic benefits, including guaranteed bill savings. ELC represents the Center on Race, Poverty & the Environment in this proceeding, and provides legal support for the Pilot Team.

Under the direction of Staff Attorney Roger Lin (see p.5), student clinicians Charisa Gowen-Takahashi, John Hannon, Luna Martinez Gomez, Sean Litteral and Craig Spencer worked tirelessly and successfully during the daunting final stages of the pilot track proceeding. They drafted several rounds of comments on proposed pilot projects, appeared on behalf of the Pilot Team at public hearings and meetings with Commissioners, and coordinated with community organizers to fulfill a key principle of



ELC Student Craig Spencer (left)

environmental justice: ensuring that residents had the opportunity to speak for themselves.

Ultimately, ELC's advocacy helped secure a \$56 million investment for pilot projects in 11 San Joaquin Valley communities, including Allensworth, that have been seeking affordable energy for an astonishing 50 years. In addition to the benefits from cleaner energy and healthier air, the program has a big economic development component. With more energy alternatives and the infrastructure to deliver them, it should become easier to attract other investments, housing, and jobs. The pilots will produce different experiences to replicate in other communities during the next phase of the proceeding, where ELC will continue to assist the Pilot Team.

Kayode put it best: "For communities like mine, it means more people will be able to get some of the benefits that are supposed to come from living in America. I see this as part of an overall process to improve the quality of life in these disadvantaged communities. We have a lot of other things we need to do, but this is an important step." At ELC, we look forward to exploring those critical next steps.



ROGER LIN
ELC Staff Attorney

ELC is delighted to welcome its new Staff Attorney, Roger Lin, a former instructor in Berkeley Law's popular Environmental Justice class. Roger will continue to explore the intersections among racial and economic justice and environmental protection at ELC, most notably by engaging the Clinic in multiple proceedings at the California Public Utilities Commission that will chart California's green energy future. In ELC's view, this future must include affordable clean energy for the state's EJ communities, must not add to local pollution burdens, and must include EJ voices in energy planning processes.

Prior to joining ELC, Roger was a Staff Attorney at Communities for a Better Environment, where he represented urban EJ constituencies in various climate justice campaigns. Roger then joined the Center on Race, Poverty and the Environment as a Senior Attorney to do similar work in a rural setting in the San Joaquin Valley. He has extensive experience in both environmental and civil rights litigation.

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ELC tackles water justice issues



ELC student Martha Camarillo — part of ELC's "**California Water Affordability**" project team — speaks with the General Manager of a farmworker cooperative in the Salinas Valley. First, nitrate pollution made the community's water undrinkable. Then, the water treatment system necessary to decontaminate it made it unaffordable.

Margo Schueler, a retired engineer at the East Bay Municipal Utility District, introduced students to **reading water-pipe blueprints**, and to the business realities of water rate regulation. Understanding infrastructural and financial challenges greatly deepened students' thinking about water rate-reform options.



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January 10, 2016

Sent via email to: Kathy.Frevert@waterboards.ca.gov

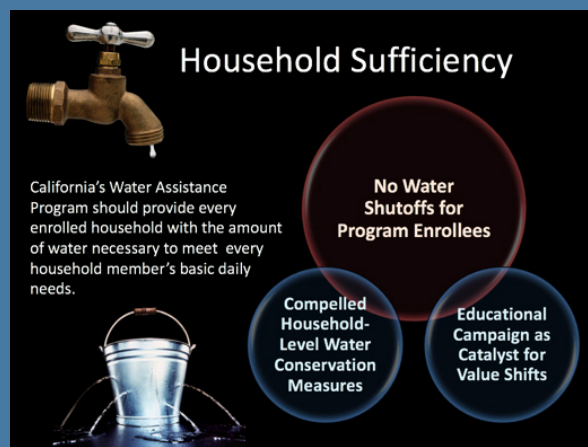
The Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board
c/o Clerk to the Board – State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: **Public Comments on Development of Low-Income Rate Assistance Program (AB 401 Implementation)**

Dear Chair Marcus and Members of the Board:

The UC Berkeley Environmental Law Clinic would like to thank the State Water Resources Control Board (the Board) for the opportunity to provide public comments on the future outlines of the State's Low-Income Water Rate Assistance Program, as envisioned in AB 401. The following document provides an overview of our research into the necessary components of this program as well as our preliminary recommendations. It is our hope to continue to engage with the Board as it continues its vital work in this area.

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ELC students prepared a comprehensive water justice proposal to the State Water Board that is markedly influencing the policy conversation. Among our key recommendations: **prohibiting water shutoffs for bill nonpayment, and linking rate reduction to water conservation measures.**

...and increases their political visibility

A four-student ELC team, comprising both law and public policy students, documented **California municipalities' woeful under-provision of drinking water and sanitation services for the urban homeless**. Their report presents a basic math problem: even under the most optimistic scenarios for construction of ultra-affordable housing, thousands of Californians will remain unhoused — and in urgent need of safe, clean, and accessible drinking water and sanitation services — for years.

The report details the environmental, health, and dignitary implications of this deficit in basic infrastructure, and recommends that municipalities at least meet international standards for drinking water and sanitation in refugee camps. Client **Environmental Justice Coalition for Water** is using ELC's report in multi-local advocacy.

BASIC & URGENT



August 2018

Realizing the Human Right to Water & Sanitation for Californians Experiencing Homelessness

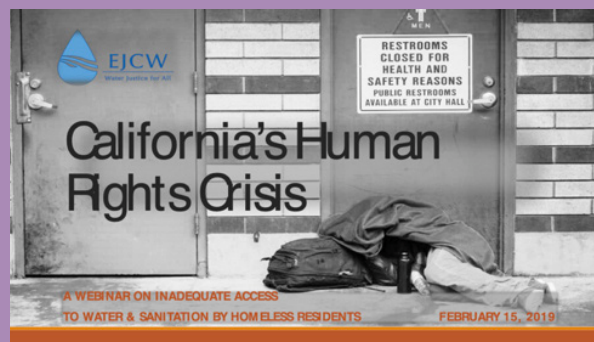
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EJCW
Water Justice for All



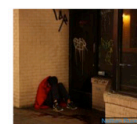
Sandra Lupien,
MPP 2018



After graduation, ELC alumna Sandra Lupien worked with our client to produce and moderate a **webinar based on ELC's report that was viewed by more than 200 people**.

ELC and EJCW joint efforts have helped to make the water and sanitation situation of the homeless sufficiently visible that **the State Water Resources Control Board is hosting a full-day symposium on the topic in April 2019**. It will include a discussion of potential roles for the Water Board in alleviating this crisis. Lupien will be among the presenters.

Access to Sanitation for People Experiencing Homelessness



Time & Location

Friday, April 19, 2019
9:30 AM - 4:00 PM

CalEPA Headquarters
Byron Sher Auditorium
2nd Floor
1001 I Street
Sacramento, CA 95814



Workshop Information

Join academic researchers, local governments, state agencies, non-governmental organizations, and advocates for a workshop to discuss access to sanitation for people experiencing homelessness.



Preserving clean car standards for environmental health & justice

PURBA MUKERJEE

Attorney & Clinical Teaching Fellow

In October 2018, in twin projects led by ELC Fellow Purba Mukerjee, ELC filed two in-depth formal comments on U.S. EPA's proposed "Safer Affordable Fuel-Efficient Vehicles (SAFE) Rule." The rule would roll back Obama-era vehicle greenhouse gas (GHG) emissions standards, and rescind California's waiver from federal preemption, which presently allows the state to maintain its own more stringent standards. ELC's letters focused on two aspects of the proposed rule: **its proposal to eliminate California's waiver** (posing environmental health risks for all), and its dishonest discussion of **vehicle affordability for lower income consumers** (which is critical to ensuring that clean air regulation is equitable).

Relying on the most current climate science—gleaned from students' interviews with leading UC Berkeley researchers, and in-depth literature review—ELC students in one letter to EPA described dramatic climate-

induced conditions in California, including extreme heat events, rainstorm intensification, water shortages, human health risks, and dwindling crop yields. It made the case that California's stringent GHG standards are essential to curbing the acceleration of conditions like these, and necessitate preserving the state's preemption waiver.

In a second letter, ELC examined the proposed rule's claim—which parroted pretextual concerns that automakers had raised to EPA—that stringent pollution standards for vehicles will harm low-income consumers by increasing vehicle cost. ELC students' research revealed, to the contrary, that relaxing existing GHG emissions standards will not meaningfully affect vehicle affordability for low-income consumers. First, the estimated \$1000 – \$2000 increase in new-vehicle prices under existing standards will be subsumed by more significant determinants of vehicle price, like macroeconomic

conditions. Second, the GHG standards apply only to new cars, and low-income consumers overwhelmingly purchase used cars, where no major price uptick is anticipated. Finally, even if relaxing GHG emissions standards would avoid a modest increase in new-vehicle prices, this would not help low-income households to buy cars; for them, lack of access to capital and affordable financing are the true barriers to vehicle purchase.

ELC's letter additionally emphasized that stringent emissions standards overall benefit low-income communities, which are often situated near freeways and busy roads, and are already preferentially burdened by high rates of asthma and other environmental diseases.

ELC will join many environmental protection commenters and allies in watching EPA's response, and preparing for further action as necessary.

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