



Tulane Environmental Law Clinic

2016 - 2017
ANNUAL REPORT

Message from the Director

September 29, 2017

Dear Colleagues:

With this annual report we mark the end of one era and the beginning of another, as Adam Babich stepped down as Director on June 30 to become a full-time teacher at Tulane Law and I took up the mantle. Adam's vast knowledge of environmental law, mastery of advocacy skills, and forcefully insistent campaigns on behalf of the Clinic's clients will surely be missed. Fortunately, he left in place a strong foundation, a cadre of seasoned attorneys with deep educational and environmental law experience, and an impressive body of work that serves as a model and inspiration for present and former student and supervising attorneys, as well as clients.

One of the accomplishments we highlight in this report, and among the legacies that Adam leaves, involves Oakville's long-running saga with the Industrial Pipe landfill. Many former student attorneys reading this report will recognize this case – and the smiling face of Allen Green depicted in this report – as we have represented the Oakville Community Action Group in matters involving this landfill nearly since the Clinic's inception in 1989. The landfill looms large, literally and figuratively, over the historic African-American community of Oakville in Plaquemines Parish, but as a result of the Clinic's work the burden the landfill poses will permanently lighten. In March, the 19th Judicial District Court in Baton Rouge entered a Consent Judgment providing for the expansion of a buffer between the active landfill and the community from 50 feet to 300 feet, a six-fold increase. The portion of the landfill now included in the buffer, which abuts the community and had been the focus of many complaints due to odors, noise, vibrations, and the eyesore it represents, will be permanently closed off. In return, the Judgment provides for expansion of the landfill in areas away from the community.

The Oakville settlement feels emblematic of much of what we do here, and is a particularly appropriate marker for the Clinic's leadership transition. Many of the Clinic's achievements do not end a controversy, a burden, a health threat, or an environmental injustice. The Industrial Pipe landfill, for example, will continue to operate. Nor do all of our successes provide permanent relief like we won for Oakville, as environmental agencies and industries can often overcome legal setbacks. So, as important as favorable judgments are for our clients, in gauging how we're doing we listen for the persistence, tone, and intensity of legal voices: our clients' and our student attorneys'. Our clients are in it for the long haul and, as this transition reflects, so are we.

Very truly yours,



Since 1989, Tulane Environmental Law Clinic has provided free legal representation and community outreach to hundreds of community groups and low-income individuals who have historically been left out of environmental decision-making processes, as well as local governments. TELC helps the Louisiana Bar meet its obligation under the legal profession's rules to ensure that access to justice is not denied to people who cannot afford legal services or whose cause is controversial or unpopular. TELC also contributes to the Louisiana legal community by training ethical and competent litigators. To learn more about us, please visit www.tulane.edu/~telc/.

TELC is a proud member of the Mississippi River Collaborative, www.msrivercollab.org.



From Left: Student Attorney Anjana Turner with Marilyn Amar and Shannon Rainey



From Left: Student Attorney Amanda Crawford and Dean Meyer

Each year, the Clinic trains 15-20 law students to practice environmental law. The Louisiana Supreme Court and the U.S. District Courts in Louisiana have adopted “student practice” rules that authorize Clinic students to appear “in court or before any administrative tribunal in Louisiana.” This authorization is a privilege, carrying with it the responsibility to provide zealous, diligent representation that meets the highest standards of professional behavior. Clinic students are sworn to place “the interests of the client” above their “personal interests or clinic interests.”



From left: Student Attorney Chance Raymond conducts smoke test with technical expert and client to identify pipe leakage points in Mississippi.



Student Attorney Clayton Anthony

Student Attorneys Fall 2016

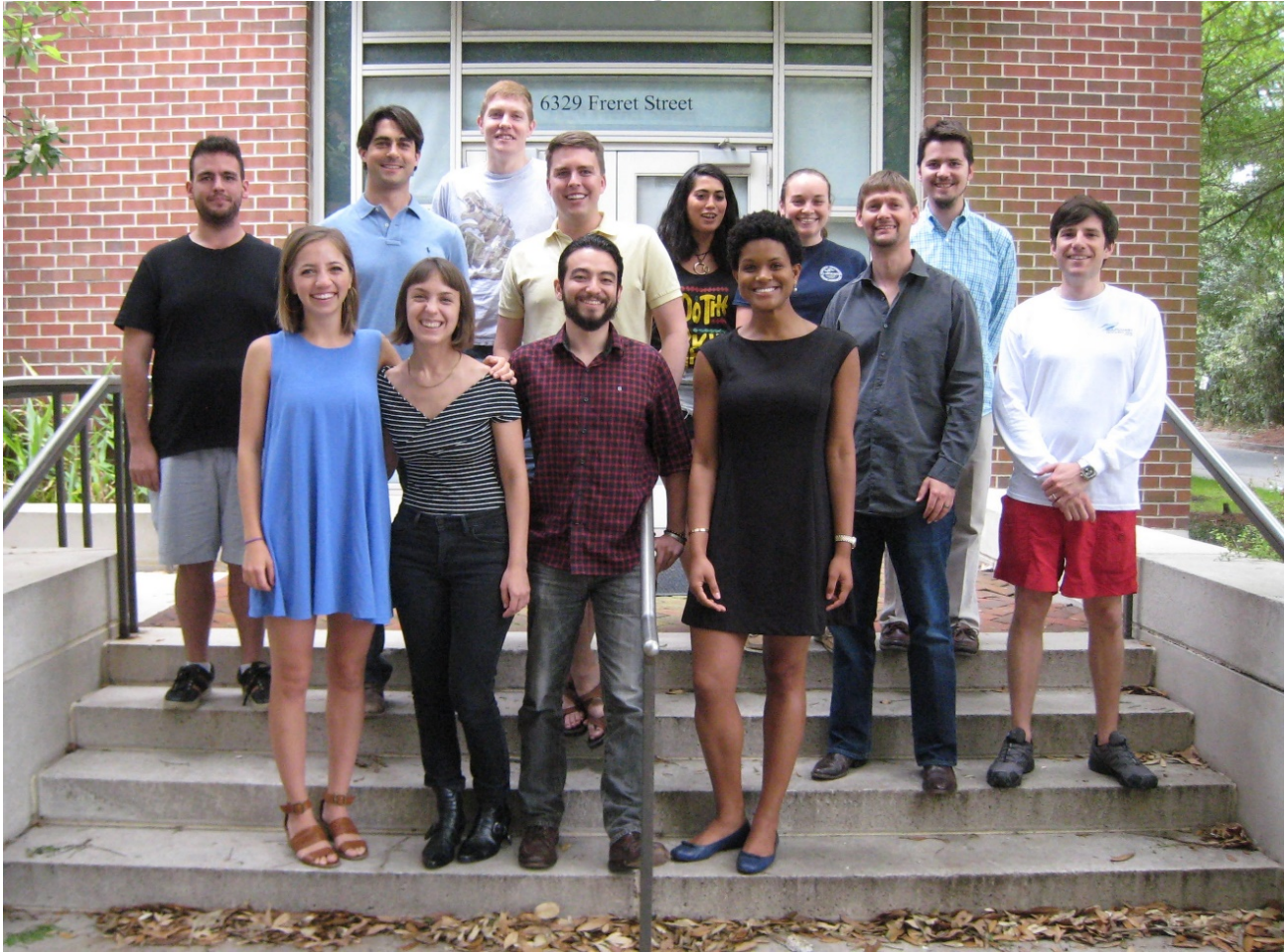


From left: Machel Hall, Clayton Anthony, Sam Bruguera, Michael (Nolan) Bush, Corinne Van Dalen, Michelle Felterman, Liza Calderon, William Blount, Kristen Hilferty, Amanda Callihan, Adam Babich, Hugh Arceneaux, Chief Justice Johnson, Anjana, Turner, Brendan Hughes, Lisa Jordan, Maria Kalousi Tatum, Elise Harmon, Jacob Kronish, Amelia Carder, Chance Raymond, Amanda Crawford, Sophia Jayanty, Russell Johnson, Ruben (Luis) Garcia, Sam Pfothenauer, Dean David Meyer

Clayton Anthony
Hugh Arceneaux
William Blount
Sam Bruguera
Michael (Nolan) Bush
Amanda Callihan
Amelia Carder
Amanda Crawford
Michelle Felterman
Ruben (Luis) Garcia

Elise Harmon
Kristen Hilferty
Brendan Hughes
Sophia Jayanty
Russell Johnson
Maria Kalousi-Tatum
Jacob Kronish
Samantha Pfothenauer
Chance Raymond
Anjana Turner

Student Attorneys Spring 2017



From back left: Ruben (Luis) Garcia, Brendan Hughes, Chance Raymond, Michael (Nolan) Bush, Sophia Jayanty, Michelle Felterman, Thomas (Tex) Steinfeldt, Russell Johnson, Zachary Wessler
From front left: Samantha Pfothenauer, Allison Skopec, Joshua Sanchez-Secor, Anjana Turner

Sam Bruguera

Michael (Nolan) Bush

Michelle Felterman

Ruben (Luis) Garcia

Brendan Hughes

Sophia Jayanty

Russell Johnson

Samantha Pfothenauer

Chance Raymond

Joshua Sanchez-Secor

Allison Skopec

Thomas (Tex) Steinfeldt

Anjana Turner

Zachary Wessler

Student Attorneys at Work



Russell Johnson



Elise Harmon



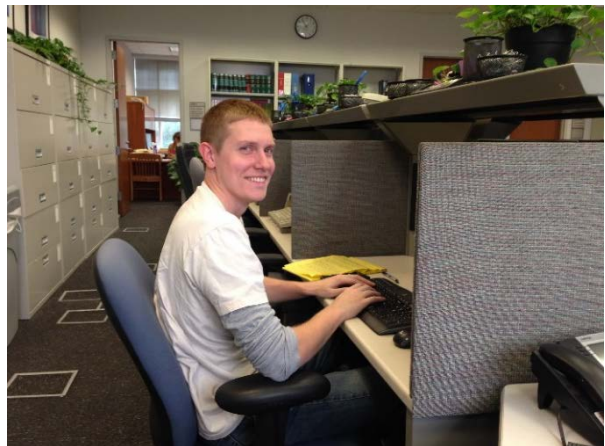
Hugh Arceneaux



Zachary Wessler



Anjana Turner and Allison Skopec



Chance Raymond

Summer research assistants help TELC's staff keep our cases moving between semesters. Undergraduate interns assist in the Community Outreach Program, providing support for clients, coalitions, and collaborations.

Research Assistants



Summer 2017

Michelle Pichardo, Mark Hamblin, Olivia Kinnear, Jessica Sherman

Interns

Fall 2016, Spring 2017, and Summer 2017

Anna Bauman

Maya Welch

Theo Hilton

Teryn Yazdani

Rachel Kahn



Above, from Left: Anna Bauman and Maya Welch (Student interns)



Above, from Left: Student Attorney Jacob Kronish and Dean Meyer



Above, from Left: Student Attorneys Ruben Garcia, Michelle Felterman, Amanda Crawford

TELC is a client-centered environmental legal services organization. This past year, TELC received requests for legal assistance from individuals and community groups across Louisiana, Mississippi, Texas, Arkansas, and along the Mississippi River basin. TELC clients are diverse – ethnically, culturally, and geographically – and have varying needs for environmental legal representation. Many have struggled for generations to protect their loved ones, homes, and local businesses against illegal and hazardous air pollution, water pollution, and wetlands degradation. Some are inspired to action because of proposed hazardous operations they had never before seen in their residential community. Others are passionate about saving endangered species or cleaning up public waterways for future generations. The Clinic represented the following client groups from July 2016 – June 2017:

Air Alliance Houston	Little Tchefuncte River Association
American College of Occupational and Environmental Medicine	350 Louisiana Chapter
American Thoracic Society	Louisiana Audubon Council
Apalachicola Riverkeeper	Louisiana Bucket Brigade
Atchafalaya Basinkeeper	Louisiana Crawfish Producers Association – West
Benicians for a Safe and Healthy Community	Louisiana Environmental Action Network
BOLD Louisiana	Ouachita Riverkeeper
California Communities Against Toxics	Oakville Community Action Group
Charter Fisherman’s Association	Pegasus Equine Guardian Association
Chesapeake Climate Action Network	Save Our Hills
Citizens Against Ruining the Environment	Sierra Club
Concerned Citizens of Belle River	Sierra Club Delta Chapter
Earthjustice	Texas Environmental Action Network
Gordon Plaza Association	Town of Abita Springs
Gulf Restoration Network	Town of Henderson
Humanitarian Enterprise of Loving People (H.E.L.P.) Association	Vanishing Earth
	Waterkeeper Alliance

*This list does not include the names of individual clients or the names of directly impacted neighborhood groups or churches affiliated with larger membership-based client organizations.

Laying Down My Sword and Shield

Adam Babich

This summer I stepped down from directing the Tulane Environmental Law Clinic to become a full-time classroom teacher. Professor Lisa Jordan took over as TELC's director. You may remember Lisa as the lawyer who supervised students' work on the famous "Shintech" case. In that case, TELC's clients challenged Louisiana's 1997 issuance of a permit for a chemical plant to emit vinyl chloride into the ambient air of Convent, Louisiana. On behalf of St. James Citizens for Jobs and the Environment and others, TELC achieved a victory. EPA issued a formal objection to the permit, granting (in part) a joint TELC-Greenpeace petition. The rest is history. The case inspired a made-for-TV movie, a political backlash, and myriad books and articles about environmental justice. Shintech built its facility somewhere else.



I became TELC's director in May 2000—three years after the EPA Shintech order. The case was still a hot topic. Had TELC gone too far? Were TELC student attorneys heroes for protecting their clients? Villains for thwarting industrial development?

Just this summer, a Tulane Law School alumna shared with me her opinion that TELC's 20-years ago victory was contrary to the public interest. She believes the community would be better off if the facility had been built. Whether she's right or not, however, is irrelevant to whether TELC handled the case appropriately. TELC's job was never to represent "the public interest" or "the community." Like any law firm, TELC serves specific clients. Those clients call the shots in terms of the lawful goals of representation (although ideally clients develop their goals in consultation with TELC). TELC's lawyers and students would not take a case in which they believed the clients' position to be unjust. Once TELC accepts a case, however, the fundamental duty of its students and supervisors is to pursue lawful client goals. This is true without regard to the views of other people or institutions

(including alumni, donors, and TELC's students and lawyers). TELC student attorneys are honor-bound to put their clients first.

If TELC has a single-minded focus on achieving client goals, how can it claim to be a "public interest" organization? The answer is that lawyers believe in the adversary system. The ABA Model Rules' preamble explains, "when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and ... assume that justice is being done." Lawyers know



Farewell Party. From left: Michael Orr (Louisiana Environmental Action Network (LEAN)), Lisa Houck, Cheri Babich, Barry Kohl (Louisiana Audubon Council), Machel Hall (TLS), Liza Calderon (TLS), Adam Babich, Lisa Jordan (TLS), David Marcello (TLS), Matt Rota (Gulf Restoration Network), Stacy Seicshnaydre (TLS), Corinne Van Dalen (TLS), John Ettinger, Marylee Orr (LEAN), Oliver Houck (TLS), Jane Johnson

that the adversary system works best when the voices of people on all lawful sides to a controversy are heard. Thus, the Model Rules instruct lawyers “to ensure equal access to our system of justice,” even for people “who are unable to afford legal services” or whose cause is “the subject of popular disapproval.” An ABA ethics opinion instructs law school clinics to “encourage, not restrict, acceptance of

controversial clients and cases.” The Rules encourage “Pro Bono” representations, that is work for “persons of limited means” and for “organizations seeking to secure or protect civil rights, civil liberties or public rights.” A core TELC mission is to train strong, competent lawyers who take these and other values of the legal profession seriously.

My seventeen years of directing TELC were a challenge and an adventure. Helping law students find their voices as advocates while expanding access to the justice system is—to borrow Ira Gershwin’s words—nice work if you can get it. Regardless of whether TELC wins or loses specific cases, its work improves environmental decision-making in Louisiana. This is because TELC provides its client base with a realistic chance of judicial relief, which in turn provides government and industrial decision-makers with an incentive to take seriously the concerns of ordinary Louisiana residents. The U.S. Court of Appeals for the Fourth Circuit explained, “The comment of an ordinary citizen carries more weight if officials know that the citizen has the power to seek judicial review of any administrative decision harming him.” TELC’s services make a difference in people’s lives.

I step down as TELC’s director with mixed emotions. I am eager for a change after 30-odd years as an environmental litigator. I am also aware that such an opportunity to teach and advance the legal profession’s core values is unlikely to come more than once in a lifetime. My consolation? TELC is in good hands.

Adam Babich is a professor at Tulane Law School, where he teaches environmental and administrative law. He received his J.D. from Yale Law School in 1983 and his B.A. from Dickinson College in 1977. He led Tulane Law School’s Environmental Law Clinic from May 2010 – June 2017. He has served as an assistant attorney general for the Colorado Attorney General’s CERCLA Litigation Section, as adjunct attorney for the Environmental Defense Fund, as partner in a Denver law firm, as editor-in-chief of the Environmental Law Institute’s Environmental Law Reporter, and as a law clerk for the Colorado Supreme Court. Under Adam’s watch, TELC received the 2010 Federal Bar Association’s (New Orleans Chapter) Camille F. Gravel, Jr. Pro Bono Award and has raised more than \$3 million in foundation grants, individual donations, and attorney fee awards.



From left: Elizabeth Livingston de Calderón, Linda Swanner, Adam Babich, Corinne Van Dalen, Machel Hall, Lisa Jordan

Lisa Jordan, Director

Lisa Jordan is a native New Orleanian, with degrees from Louisiana State University (undergraduate) and Loyola and Tulane Law Schools (JD and LLM, respectively). She comes to the Directorship with significant litigation and legal educational experience. She was a prosecutor in Orleans Parish for several years, where she handled over 75 felony jury trials and was assigned to the Violent Offender Strike Force. She has spent the majority of the past twenty years working in the Clinic. Here she has been a student attorney, supervising attorney, Acting Director, and Deputy Director. She made her mark in 1996-1998 as the lead attorney at the Clinic for the St. James Citizens for Jobs and the Environment and its regional and national partners in their successful fight against the location of the Shintech polyvinyl chloride complex in Convent, Louisiana.

Corinne Van Dalen, Clinical Instructor and Staff Attorney

Corinne Van Dalen received her JD in 1990 from the University of Florida, where she also received a B.S. in Journalism in 1986. Following law school, Ms. Van Dalen began her practice in New Orleans representing community organizations in Fair Housing Act suits. In 1992, Ms. Van Dalen moved to Washington, D.C. to work as a legislative specialist for the Coastal States Organization and later for a private law firm counseling clients on environmental matters. Returning to litigation in 1996, she worked at the Washington D.C.-based firm Arnold & Porter on product liability cases. In 2001, Ms. Van Dalen took a position with a firm that brought her back to New Orleans where she worked on insurance coverage suits involving pollution claims. She joined the Tulane Law School faculty in 2005 where she supervises and trains student attorneys at the Environmental Law Clinic. As supervising attorney, she has represented Louisiana Environmental Action Network, Sierra Club, Gulf Restoration Network, and several community organizations in citizen suits and permit challenges under the Clean Air Act, Clean Water Act, Louisiana Coastal Resources Management Act, and Louisiana Environmental Quality Act.

Elizabeth Livingston de Calderón, Clinical Instructor and Staff Attorney

Elizabeth Livingston de Calderón started her career in private practice, first with Winthrop, Stimson, Putnam & Roberts in New York City and then with Pepper Hamilton in Detroit, Michigan. She moved to New Orleans in 2002 to teach Legal Research & Writing at Tulane Law School, and directed Tulane Law School's international graduate legal studies program from 2004 to 2006. Ms. Calderón earned her J.D. *magna cum laude* from Tulane Law School, where she was a member of the Tulane Law Review. She also earned an M.A. in classical languages from Tulane University and a B.A. from Connecticut College. She joined the clinic in May 2006.

Machelle Lee Hall, Clinical Instructor and Staff Attorney

Machelle Lee Hall received her JD from Tulane University Law School where she was the Editor in Chief of the Tulane Environmental Law Journal, her MA from Central European University, and her BA from Hamline University. Ms. Hall worked at F. Gerald Maples, PA in New Orleans for 4 years, where she represented clients in the Comer global warming, Miss. River Gulf Outlet takings, Murphy oil spill, and CAPECO oil facility explosion cases. Before becoming an attorney, Ms. Hall was a consulting archaeologist performing cultural resource and environmental compliance for highway, pipeline, commercial construction, superfund and other development and mitigation projects in the Upper Midwest and Gulf Coast states. Ms. Hall also volunteers for the New Orleans Citizen Diplomacy Council, New Orleans Association for Women Attorneys, Louisiana SPCA, and Linda Bruneau Regional Breast Cancer Association.

May Nguyen, Community Outreach Director

Nguyen joined TELC in 2015. She develops and disseminates public education on Louisiana environmental law and policy (for example, community trainings based on TELC's "My Guide to Environmental Protection in Louisiana"), assists with advocacy campaigns led by TELC clients, processes intake requests, and writes grant proposals and reports. In 2013, Nguyen received the Rishwain Social Justice Entrepreneur Award for successfully designing and implementing a novel "impact claims" campaign strategy to demand recognition and calculate damages for lost subsistence use due to the BP oil drilling disaster. After Hurricane Katrina, Nguyen created culturally competent small business assistance programs and organized partnerships among diverse stakeholders to invest over \$4 million in grants and low-interest loans for rebuilding neighborhood businesses in New Orleans east. She earned a JD from UCLA Law School with a specialization in Public Interest Law and Policy, a MA from Johns Hopkins University in International Economics and Southeast Asia Studies, and a BA from Amherst College in Political Science. Vietnamese (fluent); Spanish (proficient).

Linda Swanner, Legal Assistant

Linda Swanner joined the Clinic in April 2006 as the Clinic's legal assistant and webmaster. Ms. Swanner previously worked in the Office of Academic Services at Tulane Law School. Her move was prompted by her interests in environmental and environmental justice issues. She provides administrative and clerical support to faculty, clinical staff, and student attorneys. Ms. Swanner is also is TELC's webmaster.



At Right: Samantha Pfothenauer, Jacob Kronish, Maria Kalousi-Tatum, Russell Johnson, Sophia Jayanty



At Left: Student Attorney Sam Bruguera and Lisa Jordan (Staff Attorney)



At Right: Alison Skopec (far right) attends public hearing in Lower Ninth Ward neighborhood, New Orleans

TELC's Legal Advisory Board

The Legal Advisory Board reviews case approval memoranda and recommends approval or disapproval of individual cases. Board members also provide TELC's staff with invaluable advice. We find that the process of seeking case-specific approval from a board forces us to think objectively and critically about potential cases before committing to them. Board members' questions can uncover aspects of a proposed case that we had failed to consider. Neither Tulane University nor Law School administrators appoint or control this board.

Members

Professor Paul Barron
Professor Kirsten H. Engel
Monique Harden, Esq.
James M. Hecker, Esq.
Professor Jane L. Johnson
Professor Maxine Lipeles
Michele Merkel, Esq.
Karla Raettig, Esq.
Ronald Simon, Esq.



From left: Anjana Turner (Student Attorney, Tulane Environmental Law Clinic), Sam Ejana (Residents of Gordon Plaza Association), Marilyn Amar (Residents of Gordon Plaza Association), Shannon Rainey (Residents of Gordon Plaza Association), Monique Harden (Legal Advisory Board, Tulane Environmental Law Clinic), Allison Skopec (Student Attorney, Tulane Environmental Law Clinic)

Expanded Buffer Between Landfill and Residential Neighborhood



Allen Green (Oakville Community Action Group)

On March 16, 2017, Louisiana’s 19th Judicial District Court entered a Consent Judgment to resolve a TELC lawsuit about the Industrial Pipe landfill, which is on the border of the historic, African-American community of Oakville in Plaquemines Parish, Louisiana. The judgment provides for expansion of the buffer between the active landfill and the community from 50 feet to 300 feet, a six-fold increase. It also prohibits storage of waste and cover material in the buffer area. In return, the Judgment provides for expansion of the landfill in areas away from the community. Student attorneys and supervising attorneys at the Clinic have represented the Oakville Community Action Group in matters involving this landfill for decades; the Consent Judgment provided the community concrete relief.

Limited Use of U.S. Army Corps of Engineers General Permit

On January 30, 2017, TELC settled a federal lawsuit against the Corps involving the New Orleans District’s general permit for wetlands destruction associated with construction of oilfield roads, drilling locations, pits, ring levees, and other facilities within the Corps’ New Orleans District (NOD-13). In exchange for the Plaintiffs’ dismissal of the lawsuit without prejudice, the Corps revoked NOD-13 for use in the Atchafalaya Basin, which is the nation’s largest river swamp and a central part of Louisiana’s Cajun culture. Further, NOD-13 is not available for use elsewhere pending reevaluation by the Corps. The Corps also proposed that a post-reevaluation replacement for NOD-13 exclude projects located within the Atchafalaya Basin. A “general permit” allows the Corps to approve covered projects without public notice, without an opportunity for public comment, and without a project-specific environmental assessment. The Clinic’s clients were the Atchafalaya Basinkeeper, the Louisiana Crawfish Producers Association – West and the Gulf Restoration Network.

Extended Funding for Wetlands Restoration

On February 3, 2017, the U.S. District Court for the Southern District of Mississippi entered an Agreed Order of Dismissal pursuant to a settlement that extended the availability of funds for a wetlands restoration project near Bay St. Louis, Mississippi. The original consent judgment of August 23, 2011 required Hancock County Development, LLC, to donate a parcel of disturbed wetlands to a land trust for restoration and to fund that restoration. That consent judgment required return of unspent funds to Hancock after five years unless the court extended the restoration period or a force majeure delayed restoration. The settlement resolved Gulf Restoration Network's motion to extend the restoration period. Of restoration funds that the land trust had not used to date, the settlement distributed \$97,000 to the land trust for continued restoration and returned the balance to Hancock. TELC represented Gulf Restoration Network.

Favorable Appellate Court Decision Affirming Red Snapper Management Provisions

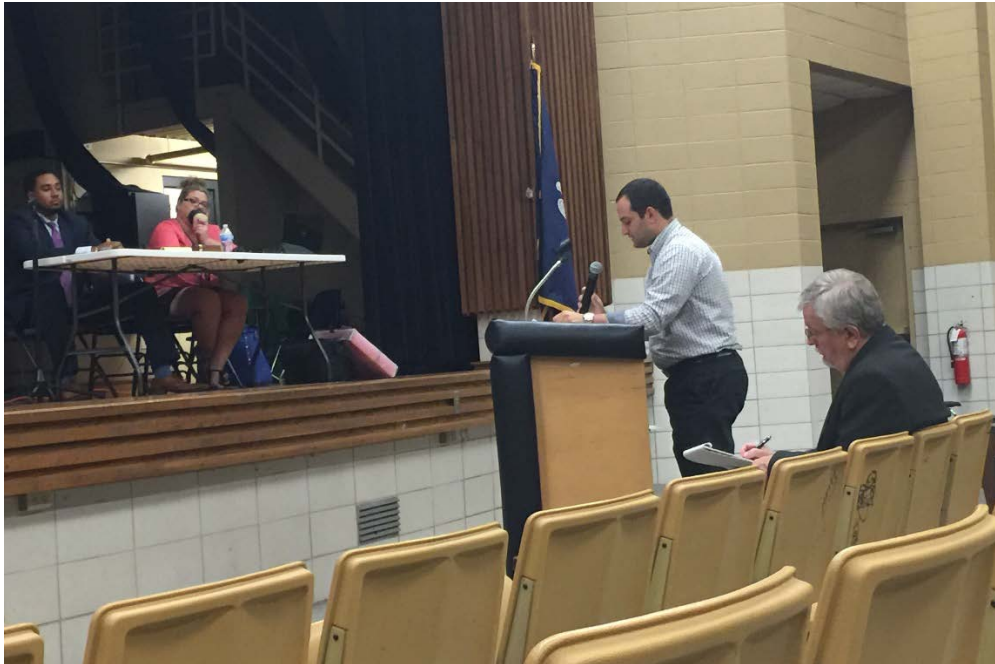


From left: Priya Sundareshan (Attorney, Environmental Defense Fund), John Paul Brooker (Policy Counsel, Fish Conservation Program, Ocean Conservancy), Captain Michael Miglini (Charter Fisherman's Association), Michelle Felterman (Student Attorney, Tulane Environmental Law Clinic), Captain Billy Archer (Charter Fisherman's Association), Captain Scott Hickman (Charter Fisherman's Association)

On January 17, 2017, the U.S. Court of Appeals for the Fifth Circuit affirmed a federal district court ruling that upheld Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. Amendment 40 implements the Magnuson-Stevens Act. It enhances protection of the overfished red snapper and promotes an equitable division of the quota for the recreational sector of the fishery between federally permitted charter boats and private anglers. TELC represented the Charter Fisherman's Association. *Coastal Conservation Ass'n v. U.S. Dep't of Commerce*, 846 F.3d 99 (5th Cir. 2017) (182-004).

Obtained EPA Order for Methanol Plant to Reform Air Permit

On August 31, 2016, EPA granted the lion's share of a petition that TELC submitted on behalf of Sierra Club and the Louisiana Environmental Action Network, objecting to a proposed methanol plant in St. James Parish, Louisiana. The state's Department of Environmental Quality had issued a Clean Air Act permit to Yuhuang Chemical Inc. for construction of the plant without state-of-the-art technology to limit release of volatile organic chemicals, greenhouse gases, and other chemicals. The state's theory was that plant emissions would be under the "major source" thresholds that trigger the requirement for state-of-the-art controls under the Clean Air Act's Prevention of Significant Deterioration (PSD) program. EPA, however, found that the state's permit limits are not adequate to keep emissions below thresholds. This is because key permit requirements are not enforceable and the permit does not limit all emissions, such as those during times of malfunction.



Jacob Kronish (Student Attorney) speaks at Louisiana Department of Environmental Quality Public Hearing in St. James Parish regarding Yuhuang Chemical Inc. permitting

Tulane Environmental Law Clinic developed the Clean Air Initiative in response to requests for legal assistance to address issues of nearby air pollution that threatens human health – including pollution from chemical and petrochemical manufacturing activities. These activities are especially concentrated in low-income and minority communities. TELC's legal efforts endeavor to abate dangerous air emissions, deter industry violations of the Clean Air Act, and support effective client participation in the government permitting and enforcement processes.

The Clinic provided legal representation on the following clean air issues from July 1, 2016 through June 30, 2017:



Lawsuits & Administrative Adjudications

On February 10, 2017, TELC filed an amicus curiae brief on behalf of the American Thoracic Society and the American College of Occupational and Environmental Medicine in the United States Court of Appeals for the District of Columbia Circuit supporting the U.S. Department of Labor's Occupational Safety and Health Administration in an industry challenge to the agency's promulgation of a rule lowering the permissible exposure limit for respirable crystalline silica in the workplace. *North America's Building Trades Unions v. OSHA*, No. 16- 1105 (D.C. Cir.)

On January 25, 2017, TELC filed an amicus curiae brief on behalf of the American Thoracic Society in the United States Court of Appeals for the District of Columbia Circuit supporting EPA in a challenge to the agency's supplemental finding that it is appropriate and necessary to include coal-fired power plants among the categories of sources required to control emissions of hazardous air pollutants under Clean Air Act regulations, and thus to retain the Mercury and Air Toxics Standards (MATS) rule. *Murray Energy Corporation v. EPA*, No. 16- 1127 (D.C. Cir.)

Comments, Notices, and Administrative Petitions

On June 8, 2017, TELC commented to LDEQ on behalf of Louisiana Environmental Action Network, Sierra Club Delta Chapter, Gulf Restoration Network (GRN), Louisiana Audubon Council, St. James Human Enterprises for Loving People (H.E.L.P.), Concerned Citizens of St. John the Baptist Parish, and Harry Joseph opposing the reissuance and modification of an air permit to Noranda Alumina, LLC for its alumina processing refinery in St. James Parish based on allegations that the proposed permit fails to require Noranda to control its mercury emissions. Noranda's mercury emissions are greater than any other facility in Louisiana and contaminate the nearby Blind River, which is subject to a fish consumption advisory due to mercury.

On March 31, 2017, TELC petitioned EPA on behalf of Sierra Club and Louisiana Environmental Action Network seeking an EPA objection to a proposed Title V Clean Air Act permit modification that the Louisiana Department of Environmental Quality issued to Yuhuang Chemical Inc. for a new methanol plant in St. James Parish, Louisiana. LDEQ issued the proposed permit modification following an EPA objection which required the state agency to reform the permit because it failed to include measures that would assure that plant emissions would not trigger Prevention of Significant Deterioration ("PSD") thresholds. The EPA order was a result of a petition that TELC had submitted on behalf of Sierra Club and Louisiana Environmental Action Network asking the EPA to object to the permit for failing to meet Clean Air Act requirements. This new petition alleges that LDEQ failed to fix the permit pursuant to EPA's objection and that EPA should issue another objection because the permit still fails to meet Clean Air Act requirements.

On January 23, 2017, TELC sent Supplemental Comments to LDEQ on behalf of the Sierra Club, the Louisiana Environmental Action Network, Genevieve Butler, and Harry Joseph opposing the proposed Clean Air Act Title V permit modification for South Louisiana Methanol for a new methanol manufacturing plant in St. James, Louisiana based on allegations that 1) LDEQ failed to require Maximum Achievable Control Technology for hazardous air pollutants and 2) South Louisiana Methanol failed to submit an adequate air quality analysis.

On December 14, 2016, TELC commented to the Louisiana Department of Environmental Quality on behalf of the Louisiana Environmental Action Network seeking reform of a Clean Air Act permit for Oxbow Calcining, LLC's, petroleum coke calcining plant in Baton Rouge because (1) emission exemptions violate the Clean Air Act (2) and monitoring requirements do not assure compliance with permit limits.

On October 24, 2016, TELC commented on behalf of Environmental Integrity Project, Louisiana Environmental Action Network, Earthjustice, Sierra Club, Air Alliance Houston, Texas Environmental Justice Advocacy Services, Chesapeake Climate Action Network, California Communities Against Toxics, Citizens Against Ruining the Environment, and Benicians for a Safe and Healthy Community to EPA seeking revisions to EPA's proposed rule regarding public petitioning procedures under the Clean Air Act Title V permitting program.

On September 12, 2016, TELC sent a Notice of Intent to file a citizen enforcement suit under Louisiana state law against ExxonMobil Chemical Co. on behalf of Louisiana Environmental Action Network and Ms. Stephanie Anthony alleging that ExxonMobil's Baton Rouge chemical plant releases dangerous air pollutants in violation of its permits and fails to properly report these releases.



Above: Student Attorney Amanda Callihan and Dean Meyer



Above: Student Attorney William Blount



At Left: Student Attorney Chance Raymond and Dean Meyer

The Water Quality Protection Initiative provides legal assistance to clients concerned about groundwater and surface water quality. TELC provides legal research, analysis, writing, and representation to enforce the Clean Water Act against polluters and to abate harmful discharges.

The Clinic provided legal representation on the following water quality protection issues from July 1, 2016 through June 30, 2017:

Lawsuits & Administrative Adjudications

On June 30, 2017, TELC filed a Writ of Certiorari with the Louisiana Supreme Court on behalf of Save Our Hills, Inc., the Louisiana Environmental Action Network, and Mr. O'Neil Couvillion requesting review of the Louisiana First Circuit Court of Appeal decision dismissing as moot the clients' appeal of the 19th Judicial District Court decision finding no subject matter jurisdiction for a judicial review of an LDEQ water quality certification for destruction of wetlands in conjunction with a Southern Aggregates LLC proposed sand and gravel mine adjacent to the Oak Hills residential subdivision in Livingston Parish, Louisiana. *In re: Louisiana Department of Environmental Quality Permitting Decision: Water Quality Certification WQC 140708-02, 2017-C-1105* (La. Sup. Ct.).

Comments, Notices, and Administrative Petitions

On May 3, 2017, TELC petitioned EPA on behalf of the Ouachita Riverkeeper and Louisiana Environmental Action Network seeking an EPA objection under the Clean Water Act (33 U.S.C. § 402(d)(2)) to a draft National Pollutant Discharge Elimination System permit issued by the Arkansas Department of Environmental Quality to Georgia-Pacific, LLC for its paper mill, chemical plant, and related facilities in Crossett, Arkansas, and alleging that the permit violates Clean Water Act requirements by failing to apply end-of-pipe technology-based effluent limits and monitoring requirements, along with toxicity testing, at the discharge points to Coffee Creek.

On February 16, 2017, TELC sent Supplemental Comments on behalf of Atchafalaya Basinkeeper, the Louisiana Crawfish Producers Association-West, and Gulf Restoration Network to the U.S. Army Corps of Engineers and Louisiana Department of Environmental Quality commenting on the revised reevaluation of the Corps' Clean Water Act § 404 regional general permit New Orleans District 13 (now titled GP-13) for board road and ring levee projects in wetlands, supporting removal of the Atchafalaya Basin from the permit's scope and opposing a change to allow roads other than board roads.

On January 10, 2017, TELC sent a Notice of Intent to Sue to EPA on behalf of the Gulf Restoration Network, Little Tchefuncte River Association, Louisiana Environmental Action Network, Sierra Club Delta Chapter, and the Louisiana Audubon Council providing notice of an EPA violation of Section 7 of the Endangered Species Act because EPA failed to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the effects on ESA-listed species of its approval of Louisiana's reduction of dissolved oxygen criteria for thirty-one streams from 5.0 mg/L or 4.0 mg/L to 2.3 mg/L.

On December 15, 2016, TELC notified EPA of its unreasonable delay in responding to the Ouachita Riverkeeper’s APA § 553(e) petition (dated September 10, 2015) for a determination that revised or new water quality standards are necessary for Coffee Creek and Mossy Lake, in Crossett, Arkansas, to meet the Clean Water Act’s requirements. The notice included a draft complaint for an “unreasonable delay” lawsuit.

On October 26, 2016, TELC sent a Notice of Intent to Sue to Kerkas, LLC, and Kenneth & Elaine Bernhard on behalf of Atchafalaya Basinkeeper and Louisiana Crawfish Producers Association - West alleging the unpermitted construction and maintenance of a dam at Lost Lake discharges fill material into the navigable waterways of the Atchafalaya Basin in violation of the Clean Water Act and is an obstruction of a public use under La. Civil Code Art. 458.



From Right: Thomas (Tex) Steinfeldt (Student Attorney) and Michelle Felterman (Student Attorney) speaking at Louisiana Crawfish Producer Association – West meeting

Loss of wetlands in southern Louisiana has reached catastrophic proportions, threatening the productivity of ecosystems, the economic viability of some industries, and the safety of residents. The Endangered Wetlands Initiative enhances client efforts to protect and restore wetlands by providing legal representation for administrative comments, negotiation, and litigation.



The Clinic provided legal representation on the following endangered wetlands issues from July 1, 2016 through June 30, 2017:

Lawsuits & Administrative Adjudications

On February 14, 2017, TELC filed an Administrative Appeal to the Secretary of the Army on behalf of the Town of Abita Springs challenging the U.S. Army Corps of Engineers' partial denial of a Freedom of Information Act request for documents regarding Helis Oil & Gas Company, LLC.

Comments, Notices, and Administrative Petitions

On March 8, 2017, TELC commented on behalf of the Gulf Restoration Network, the Sierra Club Delta Chapter, and the Atchafalaya Basinkeeper to the U.S. Army Corps of Engineers, New Orleans District, criticizing the Corps' procedure on promulgation and use of its Louisiana Rapid Assessment Method (LRAM) for calculating compensatory mitigation for wetlands destruction permitted under Section 404 of the Clean Water Act. The Corps initially sought comment on the proposed LRAM in October of 2015, but began using the method in February 2016 without completing any assessment of alternatives or impacts and without providing any decision or response to comments.

On January 31, 2017, TELC commented to the U.S. Army Corps of Engineers and the Louisiana Department of Environmental Quality on behalf of the Gulf Restoration Network, the Atchafalaya Basinkeeper, Sierra Club Delta Chapter, Louisiana Bucket Brigade, Bold Louisiana, and the Louisiana Crawfish Producers Association – West calling for the issuance of an Environmental Impact Statement and noting application deficiencies in Bayou Bridge Pipeline, LLC's, application for a Clean Water Act Section 404 Permit and 401 Certification to allow it to build a 162-mile pipeline across the Atchafalaya Basin to transport crude oil.

On November 1, 2016, on behalf of the Gulf Restoration Network, Atchafalaya Basinkeeper, Louisiana Crawfish Producers Association – West, Sierra Club Delta Chapter, Bold Louisiana, Bucket Brigade,

and the Town of Henderson, TELC requested that the U.S. Army Corps of Engineers and Louisiana Department of Environmental Quality hold a public hearing to enable members to express their opposition to the application of Bayou Bridge Pipeline, LLC, for a Clean Water Act § 404 permit and § 401 certification and a Rivers and Harbors Act § 10 permit to dredge wetlands through eleven parishes and eight watersheds to lay a 162-mile long pipeline across Louisiana to connect to the southern terminus of the Dakota Access Pipeline in Texas.

On July 25, 2016, TELC commented on behalf of Atchafalaya Basinkeeper, the Louisiana Crawfish Producers Association-West, and the Gulf Restoration Network to the U.S. Army Corps of Engineers and Louisiana Department of Environmental Quality on the Corps' reevaluation of its Clean Water Act § 404 regional general permit New Orleans District 13 (now titled GP-13) for board road and ring levee projects in wetlands and opposing re-issuance.



Student Meeting

From Left: Brendan Hughes (Student Attorney) and Corinne Van Dalen (Clinic Instructor)

The Community Preservation Initiative contributes to efforts by community groups to defend their environment against damage from land use decisions that threaten the historic value, cultural fabric, and environmental integrity of the area and its people.

The Clinic provided legal representation on the following community preservation issues from July 1, 2016 through June 30, 2017:

Lawsuits & Administrative Adjudications

On May 31, 2017, TELC filed a lawsuit on behalf of Pastor Harry Joseph, Genevieve Butler, Humanitarian Enterprise of Loving People (H.E.L.P.), Gulf Restoration Network, Atchafalaya Basinkeeper, and Bold Louisiana against the Louisiana Department of Natural Resources in the 23rd Judicial District Court of Louisiana appealing a Coastal Use Permit to Bayou Bridge Pipeline, LLC, for construction of a crude oil pipeline through the Coastal Zone of Louisiana and terminating in the majority African-American community of St. James. *Pastor Harry Joseph, et al. v. Secretary, Louisiana Department of Natural Resources*, No. 38,163 (23rd Jud. Dist.)

On December 14, 2016, TELC filed a lawsuit on behalf of Pegasus Equine Guardian Association in the United States District Court for the Middle District of Louisiana seeking to enjoin a U.S. Army decision to remove horses from the Fort Polk Military Installation without the environmental reviews required under the National Environmental Policy Act and without the historical and cultural reviews required under the National Historic Preservation Act. *Pegasus Equine Guardian Association v. U.S. Army and Brigadier General Gary M. Brito, in his official capacity as Commanding General, JRTC and Fort Polk, Louisiana*, Case No. 3:16-cv- 00849-JWD-EWD (M.D. La.)

Comments, Notices, and Administrative Petitions

On January 30, 2017, TELC commented to LDEQ on behalf of the Sierra Club, the Louisiana Environmental Action Network, Genevieve Butler, Harry Joseph, and O’Neil Couvillion opposing the issuance of an air permit modification to Yuhuang Chemical, Inc. for a new methanol manufacturing plant in St. James, Louisiana based on allegations that 1) LDEQ failed to resolve EPA’s objections to the permit; 2) LDEQ failed to apply the Clean Air Act’s Prevention of Significant Deterioration requirements; 3) LDEQ failed to require measures to assure compliance with permit limits; 4) the permit violates Title VI of the Civil Rights Act, and 5) Yuhuang Chemical failed to submit an adequate Environmental Assessment to LDEQ.

On December 29, 2016, TELC petitioned EPA on behalf of the Sierra Club, the Louisiana Environmental Action Network, Genevieve Butler, and Harry Joseph seeking an EPA objection to a proposed Title V air permit modification and Prevention of Significant Deterioration permit for South Louisiana Methanol for a new methanol manufacturing plant in St. James, Louisiana based on allegations that 1) LDEQ failed to require measures to assure compliance with permit limits; 2) the permit violates Title VI of the Civil Rights Act, and 3) South Louisiana Methanol failed to comply with its obligation to submit an adequate Environmental Assessment.

On October 3, 2016, TELC commented on behalf of the Sierra Club and the Louisiana Environmental Action Network to LDEQ opposing the issuance of an air permit modification to Yuhuang Chemical,

Inc. for a new methanol manufacturing plant in St. James, Louisiana based on 1) LDEQ's failure to resolve EPA's objections to the permit; 2) LDEQ's failure to apply the Clean Air Act's Prevention of Significant Deterioration requirements; 3) LDEQ's failure to require measures to assure compliance with permit limits; 4) an LDEQ decision to grant the permit would subject St. James residents to discrimination because of their race; and 5) Yuhuang Chemical's failure to comply with its obligation to submit an adequate Environmental Assessment Statement to LDEQ.



Site Visit

From left: Corinne Van Dalen (Clinic Instructor), Ajana Turner (Student Attorney, Tulane Environmental Law Clinic); *Background: Industrial Landfill and client homes*

The Community Outreach Program endeavors to support the power and effectiveness of organizers, grassroots organizations, and residents by integrating the Clinic's legal activities with long-term community strategies. The Program staff and interns strive to ensure that potential and existing clients develop and maintain an overall campaign strategy that creates a context within which they can realize the full benefit of legal victories and effectively manage legal setbacks.

From January - June 2017, May Nguyen and Rachel Kahn assisted a coalition of coastal community based organizations that is advocating for coastal community resilience and adaptation programming. May Nguyen met with the coalition in person and by phone 11 times; provided research and technical analysis support on their public comments regarding Louisiana's Draft 2017 Coastal Master Plan; facilitated and provided bi-lingual assistance to approximately 150 English-speaking and Vietnamese-speaking fishermen to submit public comments; co-developed talking points for their Legislative Lobby Day in Baton Rouge; and accompanied them at their meeting with Louisiana's Coastal Protection and Restoration Authority. The coalition member organizations include the Atakapa Ishak Chawasha Indian Tribe, Zion Travelers Cooperative Center, Bayou Interfaith Shared Community Organizing, Coastal Communities Consulting, Mary Queen of Viet Nam Community Development Corporation, Terrebonne Recovery Assistance Center, Oxfam, and Gulf Restoration Network. Two of the organizations are past and present TELC clients.



From Left: Robert Taylor (President, Concerned Citizens of St. John the Baptist Parish), May Nguyen (Community Outreach Director, TELC), Cherri Foytlin (Director, BOLD Louisiana, Rayne, Louisiana), Teresa Dardar (Point Au Chien Indian Tribe), Donald Dardar (Point Au Chien Indian Tribe), Harry Joseph (Pastor,

From October 2016- June 2017, May Nguyen, Maya Welch, and Rachel Kahn assisted TELC clients - Atchafalaya Basinkeeper, Gulf Restoration Network, BOLD Louisiana, H.E.L.P. Association – and others that are advocating for environmental justice, to protect endangered wetlands, and to improve water quality in the Atchafalaya Basin. May Nguyen participated in weekly campaign network calls; researched and drafted two issue statements about threats to drinking water and environmental justice; helped edit and issue a press release regarding a lawsuit challenging a Coastal Use Permit issued by Louisiana Department of Natural Resources; met with the Indigenous Environmental Network to learn about their concerns; supported a canvassing workshop led by a union organizing specialist; organized a gathering in Pointe Aux Chenes, Louisiana, for community leaders and environmental activists in four different areas of Louisiana; coordinated and facilitated an all-day

campaign strategy session for organizers, client groups, and community leaders; met with a potential funder for the advocates; met with landowner legal defense attorneys; provided legal observer support at two events where clients gave testimonials about the value of wetlands and the negative impact of laying pipelines in Louisiana; and participated in a client led phone bank drive.

In May and June 2017, May Nguyen attended two Gulf South Rising – Community Controlled Fund gatherings to learn about their program to support community leaders in areas affected by climate change.

In April and June 2017, May Nguyen attended two Louisiana Crawfish Producers Association – West monthly membership meeting with Atchafalaya Basinkeeper in Catahoula, Louisiana. Both groups are TELC clients.

From June-July 2017, May Nguyen supported Concerned Citizens of St. John Parish, a TELC client group that is advocating for community preservation, environmental quality, and enforcement of the rule of law. May Nguyen attended a public hearing regarding the nearby Noranda Alumina air permit renewal; provided law and policy information to concerned residents about air and water pollution from facilities in the area; led a workshop training on environmental research for group members and a Parish Councilman; and organized a trip for the organization leader to meet with other community leaders and environmental activists in Louisiana.

From October 2016 – June 2017, May Nguyen, Teryn Yazdani, and Rachel Kahn collaborated with Foundation for Louisiana’s (FFL) Coastal Community Resilience program staff. May Nguyen served on the FFL Support Team which met regularly to provide input and feedback in the design phase of a Community Engagement process for coastal community adaptation planning; attended three pilot meetings across southeast Louisiana to discuss climate adaptation planning with approximately 150 people in attendance; led three LEAD the Coast workshop trainings for approximately 60 people based on TELC’s “My Guide to Environmental Protection in Louisiana”; and facilitated bi-lingual round table discussions regarding climate adaptation at planning meetings in Buras and Larose, Louisiana.

On May 25, 2017, TELC attended the Kicking Off Hurricane Preparedness Season Symposium event which honored Lowlander Center, a research and planning organization which organizes coastal indigenous communities contending with the effects of climate change.

On May 8, 2017, May Nguyen presented TELC’s “My Guide to Environmental Protection in Louisiana” to a Nigerian delegation of approximately 25 people who are interested in pollution control and permitting processes in the United States. The event was organized by the United States Department of State and the New Orleans Diplomacy Council.

In January and May 2017, May Nguyen participated in two First Peoples Conservation Council (FPCC) gatherings in Pointe Aux Chenes, Louisiana to learn about environmental concerns in indigenous Louisiana communities. In September 2016, May Nguyen met with advisors and organizers of the FPCC. FPCC is comprised of six Louisiana-recognized tribes working on environmental conservation and cultural preservation.

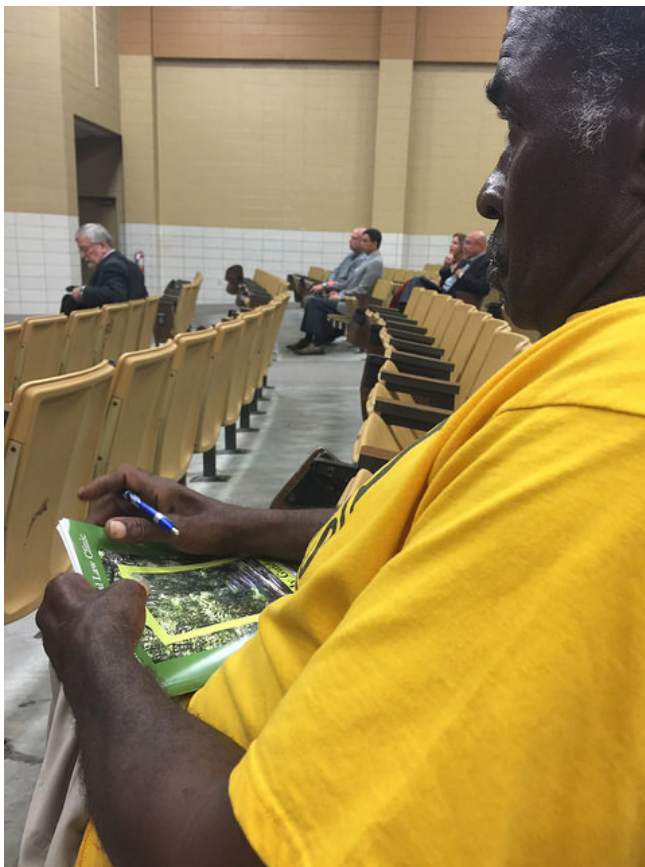
From July 2016 – June 2017, May Nguyen supported advocacy efforts led by organizers and Residents of Gordon Plaza Association, a TELC client group that is seeking to relocate off of a toxic landfill. May Nguyen attended monthly association meetings; served on the steering committee for an intersectional advocacy initiative called New Orleans People’s Assembly to advocate for the client’s interest; and drafted and collected signatures for a sign-on letter to the City of New Orleans City Planning Commission regarding the client’s proposed amendment to the master plan to include relocation funding research.

From February - March 2017, May Nguyen served on the planning committee and participated on three calls to organize the National Lawyers Guild's Southern Regional Conference, which included a panel on Environmental Justice.

On March 10, 2017, May Nguyen moderated a Panel discussion on Climate Justice with over 75 people in attendance at Tulane Law School's Environmental Law Summit - an annual event that attracts hundreds of environmental attorneys and activists.

In March 2017, May Nguyen assisted Citizens Against Widening the Industrial Canal, a TELC client and community based advocacy group in the Lower Ninth Ward of New Orleans. May Nguyen attended the U.S. Army Corps of Engineers public hearing regarding the proposed Inner Canal lock project and collaborated with the clients to co-develop a comment form that constituents could submit to express concerns and opposition to the project. The client group gathered over 48 forms from directly affected constituents in support of their position.

On February 9, 2017, May Nguyen participated in the bi-annual U.S. Army Corps of Engineers New Orleans District's Non-Governmental Organization partnership meeting.



From June 2016 – July 2017, May Nguyen assisted Little Tchefuncte River Association, a TELC client group and environmental advocacy organization. May Nguyen researched and shared information about environmental laws and policies that affect the river; provided a train-the-trainer tutorial on TELC's "My Guide to Environmental Protection in Louisiana"; and participated on multiple calls with residents and association members regarding the flood disaster in August 2016.

From September 2016 – January 2017, May Nguyen assisted Spring Bayou Management Group, a membership based community group in central Louisiana that is concerned about water management in the area where they fish. May Nguyen provided a group tutorial of TELC's "My Guide to Environmental Protection in Louisiana"; researched and shared information about environmental laws and policies that affect water quality in the area; and organized a consultation meeting for the three leaders of the group and the Tulane Institute on Water Resources Law and Policy.

Above: Harry Joseph (Pastor, Mt. Triumph Baptist Church, St. James Parish) at a Public Hearing with TELC's "My Guide to Environmental Protection in

group and community based organization) that is advocating for environmental quality in St. James Parish. May Nguyen attended two LDEQ Public Hearings at St. James High School regarding the South Louisiana Methanol Plant's pending application for a renewal and modified air permit and the Yuhuang Chemical Inc. methanol plant air permit application; and provided templates based on

In January and March 2017, May Nguyen assisted Humanitarian Enterprise of Loving People (HELP) association (a TELC client

TELC's "My Guide to Environmental Protection in Louisiana" to help affected communities members draft and submit public comments.

On November 12, 2016, May Nguyen and Maya Welch led a training based on TELC's "My Guide to Environmental Protection in Louisiana" for a group of 30 high school students from Greater New Orleans. The event was hosted by a historic African American sorority that seeks to expose young African American women to global issues that have local impact.

In September and October 2016, May Nguyen, Anna Bauman, and Maya Welch attended two climate change conferences hosted by Mississippi NAACP chapters and EEECHO, a Mississippi based environmental advocacy organization. At one conference, May Nguyen served as a judge panelist to hear testimonials of environmental racism.

From June – December 2016, May Nguyen participated in regular meetings with a coalition for energy democracy which was advocating for implementation of the EPA's Clean Power Plan. In June 2017, the group reconvened to envision ways to move forward. Some of the organizers are Deep South Center for Environmental Justice (a program of Dillard University), Sierra Club, Alliance for Affordable Energy, Louisiana 350, and Gulf Coast Center for Law and Policy (now a part of U.S. Human Rights Network).

From June 2016 - July 2017, May Nguyen maintained frequent contact with Sierra Club and Sierra Club Delta Chapter organizers throughout Louisiana. In October 2016 and March 2017, May Nguyen had several meetings with Sierra Club and Sierra Club Delta Chapter organizers to learn about various Sierra Club campaigns. On March 28-30, 2017, May Nguyen attended the Sierra Club and Energy Foundation 2017 Decarbonizing the Electric Grid Conference. On October 7, 2016, May Nguyen participated in the Sierra Club community conference on international extraction. On July 14, 2016, May Nguyen attended a Sierra Club national gathering in Louisiana organized by the Sierra Club Austin office.

On September 13, 2016, May Nguyen participated in a conference call with a network of 8-10 environmental advocacy organizations hosted by the Artist Healing Collective.

On August 22, 2016, May Nguyen participated in the Just Transition Solidarity Summit organized by Louisiana and national environmental advocacy groups which are advocating for a just transition – transition from extractive to renewable energy that minimizes negative economic impact for Louisiana residents.

On September 7, 2016, May Nguyen met with STEPS Coalition staff in Gulfport, Mississippi. STEPS coalition is a membership-based coalition of environmental advocacy organizations that provide social services and advocate for environmental justice.

In August and October 2016, May Nguyen and Anna Bauman tabled at the New Orleans Film Festival to disseminate information about TELC's services; May Nguyen and Maya Welch tabled at a RESTORE – Mississippi River Delta Plaquemines Parish community event to disseminate copies of TELC's "My Guide to Environmental Protection in Louisiana."

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