

# **EXHIBIT R**

**UNIVERSITY OF CALIFORNIA  
BERKELEY**

# Electrifying Cars, Greening Power, and Protecting Consumers

*A cy pres* proposal  
to advance clean transportation  
& enhance climate equity

Audi CO2 Cy Pres Settlement Fund

**Berkeley Law**  
Center for Law, Energy,  
& the Environment

**BerkeleyLaw**  
UNIVERSITY OF CALIFORNIA  
Environmental Law Clinic

## Introduction

The **Center for Law, Energy & the Environment** (Center or CLEE) and the **Environmental Law Clinic** (Clinic or ELC) at UC Berkeley School of Law submit this joint proposal for the parties' and Court's consideration. Berkeley Law's research Center and advocacy training Clinic are the world-engaged hubs of its environmental and energy law programs. Berkeley's environmental law program currently ranks **#1** among such programs nationwide.<sup>1</sup> CLEE and ELC here respectfully request **\$5 million** for research, educational, and professional capacity-building purposes with a tight nexus to injuries and policy issues implicated by *In re: Volkswagen "Clean Diesel" marketing, sales practices and products liability litigation* (Audi CO2 cases), MDL 2672 CRB (JSC).

The largest project we propose aims to facilitate rapid expansion of electric vehicle infrastructure in underserved communities (\$1M, 3 years). We propose additional high-impact climate justice work that we could pursue with more staff (\$2M, to increase Clinic staffing (5 years), secure Center/Clinic convening space (10 years), and support community project partners (10 years)). Finally, we make a case for essential institutional support we require to train our students well, and to do our part to diversify the environmental law bar and professoriate (\$2 M, to create an early-career teaching and research position focused on environmental justice (5 years, and to enhance environmental and energy law program support for all students (10 years)).

## CLEE and ELC

The **Center for Law, Energy & the Environment** works with government, business, the nongovernmental sector, and other stakeholders to help solve urgent environmental problems that require innovative and often interdisciplinary approaches. Drawing on the combined expertise of faculty, staff, and students across UC Berkeley, CLEE translates empirical findings into smart public policy solutions that improve environmental governance systems. CLEE projects center such issues as EV infrastructure deployment, building decarbonization, and energy retrofits for low-income multifamily housing.

The **Environmental Law Clinic** trains law students to tackle critical environmental health and justice issues through litigation, administrative practice, legislation, and policy analysis on behalf of live clients. With a focus on climate justice, the Clinic's advocacy has brought millions of dollars to fund clean energy infrastructure in the Central Valley; has forced the Environmental Protection Agency to revisit an outdated oil spill response policy that encourages risky drilling; and has daylighted rampant fraud in a prominent program that funds residential solar installations.

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<sup>1</sup> According to U.S. News & World Report's 2022 specialty rankings (2021), available at <https://www.usnews.com/best-graduate-schools/top-law-schools/environmental-law-rankings>.

At present, the Center and Clinic each undertake climate- and pollution-control projects to advance their programs. CLEE's and ELC's directors and staff also consult informally to share expertise and ideas. This *cy pres* award would be transformative in that it would enable us to expand, *integrate*, and greatly amplify our efforts. A key aspect would be to enhance our ever-increasing focus on social equity—the call of our times in the environmental arena and beyond. The shared CLEE/ELC vision and plan below would have sizeable environmental impact; would promote climate policy change that centers economic and racial justice; and would train the next generation of environmental lawyers to meet this historic moment.

## **Project Proposal & Litigation Nexus**

CLEE's and ELC's proposed collaborative work focuses on reducing fossil fuel use and associated air pollution emissions, including emissions of diesel particulate matter and greenhouse gases. In performing this work, we have been and would be attentive to issues of social equity, prioritizing underserved communities. Our past work and present goals thus have a tight nexus to three key themes in the *Volkswagen "Clean Diesel" marketing* litigation: (1) excess emissions of conventional air pollutants, including diesel particulates; (2) excess emissions of greenhouse gases (GHGs); and (3) consumer fraud, stemming from misrepresentation of cost savings, and exaggeration of green benefits. We here describe key proposed CLEE/ELC projects that address these themes.

### **I. Accelerating diffusion of public EV charging in underserved communities, through pilot projects in California cities**

CLEE's Project Climate team has ambitious, well-developed plans to bring electric vehicle (EV) charging to the neighborhoods that need it most: those severely impacted by the adverse air quality effects of combustion auto engines. These are also often among the last to receive infrastructure upgrades. Given the fuel mix supplying California's electric grid, hastening replacement of conventional vehicles with EVs would also meaningfully reduce GHG emissions from transportation—the state's largest GHG source. Although California leads the nation in EV policy and implementation, adoption of EVs and charging infrastructure has been slow and largely limited to upper-income residents. Working in partnership with California cities, our proposed project would craft policies and test deployment strategies to invert that dynamic, and drive an infrastructure rollout that preferentially benefits underserved communities.

This project would be led by Ken Alex, the Director of Project Climate. Mr. Alex brings outstanding environmental and energy law and policy experience from prior work as, *inter alia*, Senior Policy Advisor to former Governor Edmund G. Brown, Jr.; Director of the Governor's Office of Planning and Research, and Chair of California's Strategic Growth Council; and head of the California Attorney General's environment section. CLEE's experts would partner with California cities to develop and deploy policies and strategies; simultaneously, ELC's student clinicians and attorney-supervisors would analyze applicable legal issues and engage relevant communities. The project would also involve cross-campus collaboration with UC Berkeley's

Renewable Energy and Alternatives Lab through its director, Dr. Daniel Kammen. Dr. Kammen is a world-renowned expert on climate policy and science who holds faculty appointments with UC Berkeley's Energy and Resources Group, Goldman School of Public Policy, and Department of Nuclear Engineering; has been a contributing or coordinating lead author on reports of the Intergovernmental Panel on Climate Change; and is founding director of the Renewable and Appropriate Energy Laboratory. Attachment A has further project detail.

*Request: \$1,000,000 to support personnel time for the three-year initiative (2022–2025).*

## **II. Eliminating diesel emissions, greening California's electric grid, and protecting consumers in the clean-energy transition**

ELC and CLEE have independently undertaken many projects aimed at reducing diesel air pollution, greening the power sources supplying California's electric grid, and addressing financially predatory behavior in the clean energy sector.

As example, ELC—working on behalf of disadvantaged, pollution-impacted communities—has convinced the California Public Utilities Commission (CPUC) to reject a Pacific Gas & Electric proposal to rely indefinitely on diesel back-up generators during Public Safety Power Shutoffs. ELC has also influenced the CPUC's decision to direct \$56 million towards clean energy pilot projects in low-income communities of color in the Central Valley that have to date relied on propane and wood-burning for home heating. Meanwhile, CLEE has worked to facilitate smart, sustainable renewable energy development, such as by improving county-level planning for utility-scale photovoltaic facilities. It has also developed recommendations and policy actions for increasing the electric grid's ability to support distributed renewable generation while advancing community safety and resilience.

In addition, ELC has broken new ground for both law clinics and the environmental nonprofit movement with its work addressing the financially predatory behavior emergent in the increasingly lucrative clean energy sector. Working closely with nonprofit providers of direct legal services to low-income Californians, ELC has probed, explained, and publicized rampant consumer deception in a common mechanism through which homeowners pay the up-front cost of rooftop solar panels and energy efficiency measures: Property Assessed Clean Energy (PACE) financing. In a close analogy to the *Volkswagen* litigation, for-profit companies marketing PACE loans often (1) exaggerate the energy cost savings of the products they provide, thus overstating their consumer benefits, and (2) overclaim the green benefits of their products to persuade consumers to purchase them. ELC's expose, The Dark Side of the Sun: How PACE Financing Has Under-Delivered Green Benefits and Harmed Low-Income Homeowners, quickly prompted introduction of corrective legislation in California; spurred investigative journalists to research PACE abuse in other states; and was featured in several episodes on CBS-TV (here, here, and here), as well as John Oliver's This Week Tonight (where it has garnered 4 million views).

With additional funding, CLEE and ELC could deepen their work on these time-critical issues. There are three central needs. First, ELC needs funding for staff time to continue and expand work on clean energy finance for low-income residential consumers. Because student demand for slots in the Clinic currently exceeds our supervisory capacity, the number of attorney supervisors on our staff is the factor most directly limiting the number of representation matters we can accept. In the near term, with greater resources, ELC would be able to (a) work in coalition with low-income legal service providers and consumer advocates to reform residential PACE programs in California and beyond, to prevent consumer fraud in the clean energy space, and (b) represent environmental justice interests in pending proceedings at the California Public Utilities Commission that aim to produce superior models for financing residential solar energy and energy efficiency upgrades.

Second, CLEE and ELC seek funds to rent space for large internal meetings; for convening clients and issue stakeholders; and for periodic staff retreats to facilitate strategic planning and project collaborations. Currently, intense demand for limited meeting rooms and event spaces at Berkeley Law impedes the ability for CLEE and ELC staff to meet in person, and limits the frequency with which (and the notice required for) either entity to gather groups for in-depth issue discussion. Because this space crunch is campus-wide, the requested funding would enable us to rent non-campus space for these functions.

Third, we seek funds to directly support environmental justice (EJ) and community organization partners, so that they—like CLEE and ELC staff—are compensated for their time and work. Grassroots EJ and community groups express consistent frustration that larger or more institutionally visible nonprofits are funded to do work that their groups must do for free. We seek to change this dynamic by having a dedicated fund from which to make subgrants to EJ and community partners, pay honoraria when we invite such parties to speak, and otherwise remunerate minimally funded participants for their time and expenses in educating and collaborating with us.

*Request: \$2,000,000, to support ELC staffing (\$1,000,000, 5 years); securing CLEE/ELC collaboration and convening space (\$500,000, 10 years); and supporting EJ and community organizations as project partners (\$500,000, 10 years).*

### **III. Training the next generation of environmental advocates**

Even as we are honored by the #1 ranking for Berkeley's environmental law program, we are mindful that this position must be consistently re-earned. Specifically, CLEE and ELC believe that to remain top-notch and relevant in 2021 and beyond, our program must do much more to meet the social equity demands of this time. The scale of present environmental crises, and their deep interconnection with racial and economic inequality, requires us to look holistically at the training that we provide to our students, and to ensure that they are graduating culturally competent as well as technically skilled. Much of this work occurs outside of doctrinal classes, through experiential education and non-curricular programming.

ELC's primary mission is to train students to be effective legal and policy advocates in the areas of environmental health and justice. As a think tank housed in a university, CLEE is likewise designed to involve students in its applied research projects. Most of these relate to climate change mitigation and adaptation, and provide students with real-world policy formulation experience. Students trained in ELC, CLEE, or both are now routinely graduating into positions at the California Public Utilities Commission, Carbon Lighthouse, Communities for a Better Environment, Earthjustice, the Natural Resources Defense Council, and the U.S. Environmental Protection Agency, where they are working on (*inter alia*) clean energy and pollution reduction issues closely related to the Volkswagen diesel litigation.

To sustain and scale these training opportunities, CLEE and ELC are in dire need of funding to support non-classroom activities that make our environmental and energy law program expansive, coherent, and effective. These include sponsoring events to help students navigate our environmental curriculum and paths of study; providing in-depth career advising, particularly to students of color and first-generation students; assisting students in obtaining public interest summer positions and post-graduate fellowships; supporting student-initiated legal services projects to protect the environment, and the half-dozen established environmental and energy law student organizations; and administering our environmental and energy certificate programs. These functions are not institutionally funded because they are not part of the formal doctrinal education, yet they are consistently cited by environmental law students as a key reason they chose Berkeley.

ELC and CLEE have also been leading Berkeley Law's efforts on matters of diversity and inclusion in our environmental program. The Clinic has a strong record of attracting and mentoring students of color and first-generation professional students. It has also established a program to invite as course auditors Berkeley undergraduates from under-represented backgrounds, mentor them towards environmental law or graduate degrees, and support them in applying to relevant programs and obtaining necessary scholarships.<sup>2</sup> In parallel, CLEE leads Berkeley Law's environmental anti-racism working group, striving to address institutionalized racism across program activities, and has a CLEE Scholars program for students who have demonstrated a commitment to the field and would benefit from sustained mentoring and three-year scholarships. We believe these efforts are essential both to serving our diverse students well, and to creating a future environmental law bar with the cultural as well as technical competence to serve diverse clients and coalitions.

Berkeley Law students and alumni of color have repeatedly urged Berkeley Law to help create a more diverse tenure-track faculty pipeline in environmental law. We propose to do so by creating an early-career position focused on environmental justice that encompasses

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<sup>2</sup> We believe this program is the only one of its kind in a U.S. environmental law clinic. Our first auditor-mentee is now in an MD/PhD program focused on health equity; another is a 3L at Yale Law School; a third has entered Berkeley Law as a 1L; and a fourth has just applied to Berkeley Law. All are students of color, first-generation college students, or both.

both research and teaching. Although here the nexus to the Volkswagen litigation is looser than in our other proposal elements, we believe that diversifying the field of environmental academic researchers is essential to creating climate solutions responsive to the social justice call of the moment, and by extension, to creating solutions with a chance of political success.

*Request: \$2,000,000, including support for an early career research and teaching position addressing social justice and environmental issues (\$1,000,000, 5 years), and support for core programmatic activities to assist all environmental and energy law students (\$1,000,000, 10 years).*

## Conclusion

In the fifty years since the first Earth Day, environmental law has become an established and indeed mature field of study and practice. In the past five years, however, this field has been revealed as insufficiently powerful to meet the planetary crises of the moment, and insufficiently inclusive in membership to create the big-tent movement necessary for policy success. By pursuing critical vehicle pollution-reduction, clean energy, and related projects, and by working in parallel to train a diverse cadre of future environmental advocates, CLEE and ELC hope to do their part to create a sustainable future. We respectfully request the financial support necessary to realize this vision.

## Budget

<b>Accelerating diffusion of public EV charging in underserved communities, through pilot projects in California cities</b>	\$1,000,000
<b>Eliminating diesel emissions, greening California’s electric grid, and protecting consumers in the clean-energy transition</b>	\$2,000,000
<i>Additional ELC supervising attorneys and teaching fellows, to expand project docket</i>	\$1,000,000
<i>Collaboration and convening space for CLEE, ELC, and project collaborators</i>	\$500,000
<i>Sub-grants or other remuneration to EJ and community organization partners</i>	\$500,000
<b>Training the next generation of environmental advocates</b>	\$2,000,000
<i>Core programmatic activities supporting all environmental and energy law students</i>	\$1,000,000
<i>Early-career research and teaching position, centering environmental justice</i>	\$1,000,000
<b>TOTAL</b>	<b>\$5,000,000</b>