

## Embedding Racial Justice in the Work of Environmental Non-Profits<sup>1\*</sup>

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Patience A. Crowder<sup>2</sup>

Tom I. Romero, II<sup>3</sup>

“A shift is occurring as social justice activists are leveraging the climate emergency to address social justice and climate activists are leveraging Black Lives Matter, #MeToo, and other social justice movements to motivate climate action.”

-Jennie Stevens<sup>4</sup>

In response to the national and worldwide protests against racial violence and the health inequities amplified by the COVID-19 pandemic of 2020, organizations across the world—including many of those involved in environmentalism and sustainability—ostensibly declared they would re-think and re-imagine the role that racial justice, equity, and inclusion play in their work.<sup>5</sup> In Colorado, long-standing and well-known environmental

<sup>1</sup> \*We want to thank Mikayla Lee, 2025 J.D. Candidate, Student Attorney in the Civil Litigation Clinic and Technical Editor of the *Denv. J. of Intl. L. & Pol.*, for research support in completing this essay. We presented a version of this collaboration at the Ninth Annual SRP Sustainability Conference of American Legal Educators, Hosted by the Arizona State University’s Sandra Day O’Connor College of Law in May of 2023.

<sup>2</sup> Prof. of Law & Founding Dir. Econ. J. and Small Bus. Clinic, U.N.L.V. Formerly Founding Dir. Cmty. Econ. Dev. Clinic, Univ. of Denv. (2010-2023).

<sup>3</sup> Prof. of Law & Hist. & Fac. Dir. Interdisc. Rsch. Inst. Study Equal., Univ. Denv.

<sup>4</sup> JENNIE C. STEPHENS, *DIVERSIFYING POWER: WHY WE NEED ANTRACIST, FEMINIST LEADERSHIP ON CLIMATE AND ENERGY*, at xxiii (Island Press, 2020).

<sup>5</sup> *See, e.g.*, Press Release, Minn. Section of the Am. Water Works Ass’n, Statement from Minn. Section and AWWA on George Floyd Tragedy and Protests (Jun. 1, 2020), <https://www.awwa.org/AWWA-Articles/statement-from-minnesota-section-and-awwa-on-george-floyd-tragedy-and-protests> [<https://perma.cc/JWA3-KJAS>] (“AWWA is committed to engaging our workforce to promote principles of diversity and inclusion to better reflect the communities we serve”); Harlan Kelly, *Moving the Racial Equity Conservation Forward*, CAL. WATER ENV’T ASS’N (Jan. 12, 2022), <https://www.cwea.org/news/moving-the-racial-equity-conversation-forward/> [<https://perma.cc/E5LA-4TVV>] (“I am proud of the SFPUC’s firm commitment to

organizations, such as Conservation Colorado and the Metro Denver Nature Alliance, for example, made commitments to reexamine their working definitions of “equity,” “inclusion,” and racial as well as social justice.<sup>6</sup>

One such organization, the Colorado Water Trust (CWT), a water rights broker whose mission is to keep water in the rivers for fish and recreation, committed to each of the following actions:

- To act as an organization to dismantle racist systems;
- To incorporate Racial Equity and Inclusion (REI) at all levels of the organization—including drafting a strategic plan and policies for communications, project selection, membership outreach, and development, forming partnerships, and organizational leadership;

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ensuring Diversity, Equity and Inclusion in our workplace. As an organization, the [San Francisco Water Power Sewer] took an important step forward recently with the adoption of a Commission resolution that condemns systemic racism and takes action to promote racial justice.”); Press Release, Kate Greenberg, Comm’r Agric., Colo. Comm’r of Agric. Statement on the Killing of George Floyd (Jun. 4, 2020), <https://ag.colorado.gov/press-release/colorado-commissioner-of-agriculture-statement-on-the-killing-of-george-floyd> [<https://perma.cc/W45C-HUN5>] (“At the Colorado Department of Agriculture we must do all we can to be a driver of equity for people of color in food and farming and confront the history of institutionalized discrimination, and violence against people of color . . . .”); Press Release, Dominion Energy, Dominion Energy Commits \$5 Million to Soc. Just., Cmty. Rebuilding Efforts (Jun. 4, 2020), <https://news.dominionenergy.com/2020-06-04-Dominion-Energy-Commits-5-Million-to-Social-Justice-Community-Rebuilding-Efforts> [<https://perma.cc/S84R-TU4T>] (“Words can evoke empathy, compassion and understanding, but actions truly speak louder. So, we are investing in recovery and reconciliation, and in the vital work of overcoming years of debilitating actions, attitudes and abuses of authority that have traumatized our country”); Kristi E. Swartz, *A Year After George Floyd Protests, What’s Changed for Utilities?*, ENERGY WIRE (Aug. 9, 2021, 6:17 AM), <https://www.eenews.net/articles/a-year-after-george-floyd-protests-whats-changed-for-utilities/> [<https://perma.cc/5RJP-Q793>] (discussing a variety of utility companies and their promises regarding racial justice).

<sup>6</sup> See *Communities & Justice*, CONSERVATION COLO., <https://conservationco.org/communities-justice/> [<https://perma.cc/6DKF-VAUH>] (last visited Dec. 9, 2023); *Assessing Equity in Nature*, METRO DENV. NATURE ALL., <https://www.metrodna.co/equityassessment> [<https://perma.cc/4R97-62DH>] (last visited Dec. 9, 2023).

- To include criteria in its project selection analyses that evaluates the impacts of proposed projects on underrepresented communities;
- To participate in opportunities that cultivate diverse and inclusive employment and leadership in water, environmental, and recreational professions;
- To support and encourage CWT staff and Board members to pursue REI action;
- To provide staff with paid time off for volunteer service and encourage staff to volunteer with organizations that work towards REI;
- To participate in activities that embrace and advance REI principles in the broader Colorado water community; and
- To maintain a standing REI Committee composed of CWT Board members and CWT staff.<sup>7</sup>

We are Community Engaged Researchers and Practitioners as well as Critical Race Theorists, and we have substantive understandings of water rights and community non-profit development. Accordingly, this partnership allowed us to test how and in what ways law schools can and should directly intersect, engage, and transform the work of environmental and other organizations committed to racial justice.

In the realm of environmental law and policy, such efforts represent an acknowledgment of a longer-standing disconnect between environmental movements and racial justice advocacy.<sup>8</sup> Although this is not a new

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<sup>7</sup> See *Equity and Inclusion*, COLO. WATER TR., <https://coloradowatertrust.org/equity-and-inclusion/> [<https://perma.cc/CPG2-R9EL>] (last visited Dec. 9, 2023).

<sup>8</sup> Nadia B. Ahmad & Melissa Bryan, *Environmental Law as Segregation*, 64 HOWARD L. J. 439, 448–49 (2021); Jedediah Purdy, *Environmentalism's Racist History*, THE NEW YORKER (Aug. 13, 2015), <https://www.newyorker.com/news/news-desk/environmentalisms-racist-history> [<https://perma.cc/DY3W-TXRL>]; Daniel Rami, *Episode 82: The Challenge of Diversity in the Environmental Movement, With Dorceta Taylor*, RESOURCES RADIO (Jun. 23, 2020), <https://www.resources.org/resources-radio/challenge-diversity-environmental-movement-dorceta-taylor-rebroadcast/> [<https://perma.cc/56YL-8YEX>]; DORCETA E. TAYLOR, THE STATE OF DIVERSITY IN

development, this particular collaboration revealed an unprecedented opportunity to align an environmental organization’s mission and vision on behalf of the “natural environment” with its own increasing awareness of both human dependency and interaction with these same natural resources. While much of the work of environmental non-profits is necessarily local, dependent upon local geographies and climates, advocacy tools developed through this alignment have the potential to become replicable models capable of adaptation from one community and one organization to the next.

Accordingly, we believe these connections can best be explored by unpacking the following four questions in collective and on-going conversation:

1. What sorts of internal mechanisms can environmental organizations adopt, such as equity assessment tools and community asset maps, to evaluate the potential impact of their work on advancing or limiting racial equity before commencing new projects and to then evaluate those projects once completed?
2. Given concerns about organizational capacity and limited resources, how should environmental organizations build meaningful and reciprocal community partnerships with racial equity advocates?
3. How can environmental organizations reimagine their roles as partners with sovereign entities (whether tribal, federal, state, or local) to elevate and amplify new alignments between environmental advocacy and racial equity movements?
4. What role do law schools and higher education play in answering these questions?

We provide some answers to these queries by detailing the collaborative efforts of Professor Crowder’s Community Economic Development Clinic

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ENVIRONMENTAL ORGANIZATIONS 3–4, 7 (Green 2.0, 2014), [https://diversegreen.org/wp-content/uploads/2021/01/FullReport\\_Green2.0\\_FINAL.pdf](https://diversegreen.org/wp-content/uploads/2021/01/FullReport_Green2.0_FINAL.pdf) [<https://perma.cc/58SL-QGEC>].

(CEDC) to develop an Equity Assessment Tool for the CWT to understand and engage more deeply and directly with diverse communities where our projects live both now and into the future.<sup>9</sup> Informed by Professor Romero's Color of Water in Colorado project and own expertise on the intersections between water law, policy, and practice and Critical Race Theory,<sup>10</sup> the collaboration we describe is a model by which law schools and justice-oriented Professor-Practitioners alike can partner with environmental organizations to increase the inclusivity and impact of their work while keeping the most vulnerable and minoritized communities in mind.

Our essay is divided into three parts. Part I explains in more detail the work of the CWT and its journey in connecting its organizational mission to that of racial inequities and injustice. Part II details the specific representation of the University of Denver Sturm College of Law's CEDC and the opportunities as well as challenges of creating an institutional mechanism by which racial inequity can be embedded in the organization's public-facing projects. Part III concludes by noting some of the ongoing as well as future efforts in the implementation of the Equity Assessment Tool and implications for future environmental as well as racial justice collaborations.

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<sup>9</sup> *An Exciting Development for Colorado Water Trust's Equity Goals*, COLO. WATER TR. (May 17, 2023), <https://coloradowatertrust.org/an-exciting-development-for-colorado-water-trusts-equity-goals/> [<https://perma.cc/CWN3-BAW3>].

<sup>10</sup> See *The Color of Water in Colorado*, U. OF DENV. INTERDISC. RSCH. INST. FOR THE STUDY OF (IN)EQUAL., <https://operations.du.edu/irise/color-water-colorado> [<https://perma.cc/9H99-ZCLL>] (last visited Dec. 9, 2023); Tom I. II Romero, *The Color of Equity: Observations of a Brown Buffalo on Indigenous Water Rights, Japanese Internment, and the Socio-Legal History of the Colorado River*, 33 W. LEGAL HIST. 159, 161–63 (2023); Tom I. II Romero, *The Color of Local Government: Observations of a Brown Buffalo on Racial Impact Statements in the Movement for Water Justice*, 25 CUNY L. REV. 241, 241 (2022); Tom I. II Romero, *The Color of Water: Observations of a Brown Buffalo on Water Law and Policy in Ten Stanzas*, 15 DENV. WATER L. REV. 329, 331–34 (2012).

## I. THE COLORADO WATER TRUST: FROM WATER RIGHTS FOR RIVERS TO WATER RIGHTS TO FOSTER GREATER RACIAL EQUITY AND INCLUSION

The Colorado Water Trust was founded in 2001.<sup>11</sup> At the time, Colorado was experiencing “the worst drought the region had ever seen and rivers were deeply threatened.”<sup>12</sup> This drought, in particular, exposed the challenges of the state’s water law regime on the natural environment. Colorado’s water law was based on the law of prior appropriation, which established rights to specifically water-fungible property interests.<sup>13</sup> Most importantly, the exercise of one’s water rights in the state left many streambeds largely empty of water, impacting the watersheds and aquatic species of those rivers.<sup>14</sup> Although the Colorado Water Conservation Board (a state agency) had the ability to hold water rights to help preserve streamflows,<sup>15</sup> of those rights had little impact in protecting and restoring water in the state’s rivers.

Into this hydrologic and related environmental crisis, a group of water lawyers, engineers, and conservationists created the “CWT“. They specifically envisioned a non-profit that would work within Colorado’s

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<sup>11</sup> *Colorado Water Trust’s Mission is to Restore Water to Colorado’s Rivers*, COLO. WATER TR., <https://coloradowatertrust.org/about-us/> [<https://perma.cc/EB98-YG83>] (last visited Dec. 9, 2023).

<sup>12</sup> *Id.*

<sup>13</sup> See Romero, *The Color of Local Government* *supra* note 10, at 254; S. Hockaday & K.J. Ormerod, *Western Water Law: Understanding the Doctrine of Prior Appropriation*, UNIV. OF NEV. (2020), <https://extension.unr.edu/publication.aspx?PubID=3750> [<https://perma.cc/P94Q-TY3G>]; Lawrence J. Macdonnell, *Prior Appropriation: A Reassessment*, 18 U. DENV. WATER L. REV. 228, 235, 259–60 (2015). For an accessible understanding of the Doctrine of Prior Appropriation, see sources cited at *infra* note 34 and accompanying text.

<sup>14</sup> Steven M. Smith, *Instream Flow Rights Within the Prior Appropriation Doctrine: Insights from Colorado*, 59 NAT. RES. J. 181, 185 (2019); see Macdonnell, *supra* note 13, at 304–305; Laura Ziemer et al., *How the West is Won: Advancing Water Law for Watershed Health*, 42 PUB. LAND & RES. L. REV. 81, 82 (2020).

<sup>15</sup> Smith, *supra* note 14, at 192.

water law system to buy and lease water for environmental purposes.<sup>16</sup> For water lawyers and policymakers, this was a radical concept. As Mike Browning, one of the CWT’s founders observed:

“Back then, instream flows were not well understood and many were suspicious of the intentions associated with them. Consequently, our first task was to convince the established water community—not known as a flexible bunch—that we really did want to work within the existing system and were not a threat to their water rights.”<sup>17</sup>

In subsequent years, the CWT emerged as one of the most well-respected environmental organizations in the field of water law and policy due to their ability to negotiate deals with water rights holders such as farmers and ranchers, as well as their credibility in bringing multiple water rights stakeholders to the table. The organization pursued an approach that “benefits farmers, fish and everyone who depends on healthy rivers.”<sup>18</sup> As

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<sup>16</sup> The CLT’s founders, “Mike Browning, Leo Eisel, David Getches, David Harrison, [Carol Ekarius,] and David Robbins, were some of the top water lawyers and engineers in the state . . . .” Memorandum from Dana Dallavalle, Dir. Dev., Colo. Water Tr. on Hist. of Leadership and Funding Sources 1 (Jun. 29, 2018) (on file with author); see generally David Getches, *Water Wrongs: Why Can’t We Get it Right the First Time*, 34 ENV’T L. 1 (2004); David H. Getches, *Foreword* to TRIBAL WATER MANAGEMENT HANDBOOK, at xv (Am. Indian Res. Inst. (AIRI) 1988); David H. Getches, *Tribal Water Issues and the Changing Policy Landscape*, in SUMMARY OF INDIAN WATER 1997 PHOENIX, ARIZONA MARCH 17-18, 1997 3, (The Western Water Policy Review Advisory Commission, 1997); David W. Robbins & Dennis M. Montgomery, *What Water Lawyers Should Know About Water Quality*, 1 NAT. RES. & ENV’T 16, 16 & 57 (1986); David W. Robbins & Dennis M. Montgomery, *The Arkansas River Compact*, 5 U. DENV. WATER L. REV. 58 (2001).

<sup>17</sup> COLO. WATER TR., CELEBRATING 20 YEARS OF RESTORING FLOWS TO RIVERS 4 (2021).

<sup>18</sup> Water Strategies, *How the Colorado Water Trust Uses Market-Based Agreements to Benefit Rivers and Irrigators*, ISSUE (Jul./Aug. 2022), [https://issuu.com/waterstrategies/docs/il\\_july\\_august\\_2022/s/16456889](https://issuu.com/waterstrategies/docs/il_july_august_2022/s/16456889) [<https://perma.cc/V3HF-8H9C>].

of this writing, the CWT has restored 20.82 billion gallons of water and 74,555 acre-feet to 600 miles of Colorado’s rivers.<sup>19</sup>

Nearly 20 years after its founding, a different, but nonetheless equally monumental, crisis faced not only Colorado but the world. The global movement for Black Lives Matter in 2020 compelled the organization, like so many other non- as well as for-profit entities around the globe, to take a variety of steps to incorporate considerations of race, equity, and inclusion in its decision-making framework.<sup>20</sup>

As an initial matter, the CWT instituted a board-level Racial Equity Inclusion (REI) committee in 2020. Comprised of equally visionary water law policy practitioners and conservationists,<sup>21</sup> CWT’s REI committee drafted the following and included it on the CWT’s website at the time:

Colorado Water Trust’s Mission is to restore flow to Colorado’s rivers in need. We acknowledge that water truly nourishes everything and everyone, and *we commit to executing our mission in a way that advances Racial Equity and Inclusivity.*

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<sup>19</sup> *Our Impact*, COLO. WATER TR., <https://coloradowatertrust.org> [<https://perma.cc/LS4N-5AXT>] (last visited Dec. 12, 2023).

<sup>20</sup> See *Equity and Inclusion*, *supra* note 7.

<sup>21</sup> Emily Hunt, David Taussig, Brad Weinig, and Julie Nania are among the equally visionary water law policy practitioners composing the Racial Equity Inclusion Committee. See generally *Emily Hunt*, COLO. WATER CONG., <https://www.cowatercongress.org/board-members/emily-hunt/> [<https://perma.cc/4W48-YMN7>] (last visited Dec. 12, 2023); *David C. Taussig*, WHITE & JANKOWSKI LLC, <https://www.white-jankowski.com/our-people/lawyers/david-taussig> [<https://perma.cc/L62G-CCSH>] (last visited Dec. 12, 2023); David C. Taussig, *The Devolution of the No-Injury Standard in Charges of Water Rights*, 18 U. DENV. WATER L. REV. 116 (2014); Brad Weinig, LINKEDIN, <https://www.linkedin.com/in/brad-weinig-293378b/> [<https://perma.cc/6GFU-GYD6>] (last visited Dec. 12, 2023); Julie Nania, LINKEDIN, <https://www.linkedin.com/in/julie-nania-609a13b/> [<https://perma.cc/7ZS2-VLUC>] (last visited Dec. 12, 2023); JULIE NANIA & JULIA GUARINO, RESTORING SACRED WATERS: A GUIDE TO PROTECTING TRIBAL NON-CONSUMPTIVE WATER USES IN THE COLORADO RIVER BASIN (Getches-Wilkinson Ctr. for Nat. Res., Energy, and the Env’t, 2014), [https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1001&context=books\\_reports\\_studies](https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1001&context=books_reports_studies) [<https://perma.cc/8K6Z-SWF2>].



Our approach to this commitment is dynamic and expanding, and currently consists of the following principles and actions:

- Committing as an organization to dismantling racist systems.
- Incorporating Racial Equity and Inclusion (REI) at all levels of our organization. This includes in our strategic plan, policies, communications, projects, membership outreach and development, partnerships, and organizational leadership.
- Inclusion of criteria in the CWT's project selection analyses that evaluate impacts of proposed projects on underrepresented communities.
- Participating in opportunities that cultivate diverse and inclusive employment and leadership in water, environmental, and recreational professions.
  - The CWT is a proud sponsor of the Colorado State University Water Sustainability Fellowship Program <https://watercenter.colostate.edu/studentfellows/>.
  - The CWT publishes a Blog series on diversity in the Colorado water, environmental, and recreational communities
- Supporting and encouraging CWT staff and Board members to pursue REI action.
  - The CWT provides staff with paid time off for volunteer service, and encourages staff to volunteer with organizations that work towards REI.
- Participating in activities that embrace and advance REI principles in the broader Colorado water community.
- Maintaining a standing REI Committee composed of CWT Board members and CWT staff.

As we pursue this work, we commit to:

- Acknowledging mistakes. If we take enough risks, we will fail sometimes. Own it. Learn and grow.

- Listening. We would love to hear from you. Please help us grow and let us know how we are doing.
- Transparency & accountability. Visit this page often to watch our progress.<sup>22</sup>

In July 2021, Professor Romero officially joined the CWT's Board of Directors. At the time, Professor Romero was completing a term as the Chief Diversity Officer at the University of Denver and was therefore deeply steeped in thinking about how and in what ways institutions create systemic as well as institutional change for diversity, equity, and inclusion efforts.

Just as importantly, Denver Law had, over several years, cultivated a strong working relationship with the CWT with a focus on its curricular offerings and extra-curricular opportunities for students and alumni. Indeed, Denver Law alumni had led the CWT as its Executive Director and its legal team.<sup>23</sup> CWT staff provided guest lectures and mentoring in Professor Romero's Water Law survey or taught their own substantive water law course as adjuncts. Finally, Denver Law students regularly received

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<sup>22</sup> Memorandum from Colo. Water Tr. on Advancing Racial Equity and Inclusion, [https://docs.google.com/document/d/15r52sHt-qNxHfMS5PvM\\_wwc7vlZCVU3VlfcE9QXMdAg/edit](https://docs.google.com/document/d/15r52sHt-qNxHfMS5PvM_wwc7vlZCVU3VlfcE9QXMdAg/edit) [<https://perma.cc/2UD9-JMFF>] (last visited Dec. 12, 2023) (emphasis added).

<sup>23</sup> DU Law Alumni include Amy Beatie and Zach Smith. See generally *Amie Beatie*, VOLUNTEERS FOR OUTDOOR COLO., <https://www.voc.org/board-members/amy-beatie> [<https://perma.cc/A5ER-EESQ>] (last visited Dec. 12, 2023); Amy Beatie & James Fosnaught, *City of Golden's Application for Surface Water Rights: A Kayak Course, Instream Flow, Dilution, or What*, 2 U. DENV. WATER L. REV. 273 (1999); Amy W. Beatie & Arthur R. Kleven, *The Devil in the Details: Water Rights and Title Insurance*, 7 U. DENV. WATER L. REV. 381 (2004); Amy W. Beatie, *Water Rights Title Insurance: Cure for Dusty Books and Rickety Ladders*, 10 U. DENV. WATER L. REV. 127 (2006); Zach Smith, O'MELVENY, <https://www.omm.com/professionals/zach-smith/> [<https://perma.cc/BD2Y-NF94>] (last visited Dec. 12, 2023); Zach Smith, *Making Colorado's Rivers a (Senior) Priority*, U. DENV. WATER L. REV. 369 (2017); Zach Smith & Jamie Sudler, *Ethical Issues for Water Lawyers: Dealing with Parties who are Unrepresented or Have Limited Representation*, 22 U. DENV. WATER L. REV. 25 (2018).

internship opportunities at the CWT, and the organization continued to hire Denver Law alumni.

As a Board Member, Professor Romero encouraged leveraging the connections between Denver Law and the CWT to help the Trust achieve its REI goals. Particularly, as the organization embedded REI *impact and assessment* as part of its newly adopted strategic plan in the summer of 2021, Professor Romero believed that Denver Law’s clinical programs—specifically, its CEDC—could provide strategic expertise.<sup>24</sup>

## II. PARTNERING WITH DU LAW’S CED CLINIC TO DESIGN A RACIAL EQUITY ASSESSMENT TOOL TO ASSESS RACIAL INEQUITY IN THE COLORADO WATER TRUST’S PUBLIC FACING PROJECTS

This portion of the article describes how two 3L student attorneys<sup>25</sup> in Denver Law’s CEDC designed an Equity Assessment Tool for the CWT.<sup>26</sup>

Community economic development (CED) is both a legal practice and a social movement,<sup>27</sup> without a succinct definition. CED clinicians as legal practitioners, however, embrace certain themes in their clinical work, including “creating community and individual assets, democratic participation and equitable development of resources, self-help, conflict to create social change, and citizen participation.”<sup>28</sup> The CEDC at Denver Law is a year-long transactional (non-litigation) law clinic in which upper-level law students learn the fundamentals of transactional practice through the

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<sup>24</sup> See *An Exciting Development for Colorado Water Trust’s Equity Goals*, *supra* note 9.

<sup>25</sup> Being enrolled in a year-long clinic is not the easiest undertaking given the demands on the time and attention of graduating law students; however, student attorneys Matthew Nilsen and Amelia Stefan did exceptional work with the CWT.

<sup>26</sup> The CEDC has permission from the Colorado Water Trust to share this information.

<sup>27</sup> WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* 3 (Duke Univ. Press, 2nd prtq. 2005).

<sup>28</sup> See Gowri J. Krishna et al., *Caring for the Souls of Our Students: The Evolution of a Community Economic Development Clinic During Turbulent Times*, 28 *CLINICAL L. REV.* 243, 245 n. 1 (2021).

supervised representation of under-resourced entrepreneurs and small business owners, nonprofit corporations, and community-based organizations.<sup>29</sup> Typical client matters include: forming new legal entities; drafting ownership agreements, bylaws, and other types of governance documents; drafting contracts, such as independent contractor agreements and template vendor as well as customer agreements; advising about licensing and permitting requirements; counseling about industry standards; and researching as well as advising on a wide range of other topics. Student attorneys also provide community education workshops to minority business owners as well as other underrepresented entrepreneurs and small business owners about topics relevant to their operations, such as business formation, intellectual property distinctions, and best practices.<sup>30</sup> In addition to participating in direct legal representation and community education projects, student attorneys attend a weekly seminar to learn relevant substantive legal topics (such as Colorado corporate law) and to practice lawyering skills (such as client counseling) in a transactional context. For this project, however, the students had to conceive of a solution for which the clinic did not have a model—representing the highest form of transactional lawyering by creating a completely new model for the client.

Given the nature of the work and the 12-credit load (which requires approximately 20–25 hours of work per week from each student), student attorneys are required to commit a significant amount of time to the CEDC. Transactional law clinics are popular amongst clinical offerings and admission to the CEDC is generally sought after by two types of students:

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<sup>29</sup> *Fall 2024-Spring 2025 (Year Long Clinic): Professor Joseph McKay*, U. DENV. STURM COLL. L., <https://www.law.du.edu/academics/practical-experience/clinical-programs/community-economic-development> [<https://perma.cc/FK87-YHCA>] (last visited Dec. 14, 2023); see also Patience A. Crowder, *Designing a Transactional Law Clinic for Life-Long Learning*, 19 LEWIS & CLARK L. REV. 413, 416–17 (2015).

<sup>30</sup> *About the CED Clinic*, CMTY. ECON. DEV. CLINIC, <https://www.law.du.edu/sites/default/files/2019-08/CEDC-Brochurepdf.pdf> [<https://perma.cc/9J83-6Q4L>].

(i) those who want to learn about corporate and business law practice and do not want to litigate, and (ii) those who want to learn about social justice law practices and do not want to litigate. Fundamental to the pedagogical philosophy underlying all aspects of learning and practice in the CEDC is that transactional law is about value creation, meaning creating value for all parties involved so that each party is better off than it was before the transaction.<sup>31</sup> While the CEDC's work is always centered around the clients' goals, being grounded in CED principles means that the CEDC students are challenged to reimagine the concepts of terms such as "party," "transaction," and "value" beyond their traditional interpretations. This practice was epitomized by the CEDC's representation of the CWT to create a novel Equity Assessment Tool for informing its decision-making processes about its water transactions.<sup>32</sup>

As explained earlier, the CWT began to assess its articulated and demonstrated commitment to racial equity and inclusion in response to racial justice protests as well as the health and wealth inequities highlighted by the COVID-19 pandemic.<sup>33</sup> Professor Romero, in his capacity as a CWT Board Member and a member of its newly formed REI Committee, contacted Professor Crowder to discuss a potential collaboration in which students in the CEDC would work with representatives of the CWT under Professor Crowder's supervision to produce a tool that would help the organization meet its commitment to execute its "mission in a way that advances Racial Equity and Inclusivity."<sup>34</sup> In addition to requesting a tool that could be implemented by CWT staff members, the CWT also hoped to

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<sup>31</sup> See ALICIA ALVAREZ & PAUL TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 1 (W. Acad. Publ'g., 2 ed. 2022).

<sup>32</sup> Professor Crowder's research and thus her clinics are situated in finding transactional (non-litigation) methods for advancing social change and include examining the potential roles of private agreement and alternative governance structures in advancing social justice.

<sup>33</sup> See *Equity and Inclusion*, *supra* note 7.

<sup>34</sup> See *An Exciting Development for Colorado Water Trust's Equity Goals*, *supra* note 9.

receive a tool that it could share with its community partners and stakeholders to demonstrate its REI efforts as well as to share as a replicable model with other organizations seeking to achieve similar equity and inclusion goals. As such, this tool was a novel concept for environmental organizations in Colorado.

Here's a hypothetical to explain what the CWT is hoping to assess:

Hypo: The CWT wants to contract with Rancher X to divert a certain amount of water for a certain period of time from Rancher X's property to increase water flows in a nearby river. Before completing the transaction, CWT would like to use the tool to help assess whether there are any potential positive or negative externalities that could have racial justice implications. Questions to answer might include the following:

- Could the reallocation of water rights on a permanent or temporary basis positively or negatively impact a community of color that actively uses the river as it currently flows whilst not dwelling on Rancher X's property?
- Could the reallocation of water rights on a permanent or temporary basis from Rancher X's property require a change in the type of labor occurring on the property, and could that change negatively affect the livelihoods of agriculture workers both on and off the ranch?
- Could the reallocation of water rights on a permanent or temporary basis potentially implicate culturally contingent, community- or Indigenous-centered water rights like those that exist in the Acequia system or those held by tribes?<sup>35</sup>

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<sup>35</sup> For an accessible understanding of how water rights work in Colorado work, see WATER EDUC. COLO., *CITIZEN'S GUIDE TO COLORADO WATER LAW* 6-9, 16-17 (5<sup>th</sup> ed. 2021). Acequias and Indigenous water rights in Colorado are detailed in WATER EDUC. COLO., *CITIZEN'S GUIDE TO COLORADO'S WATER HERITAGE* (2018). Recognizing the term citizen might be exclusive, the Colorado Foundation for Water Education is in the

The first step in this process was to determine the proper title of the document to help narrow the tool's scope. Initial thoughts pointed to the creation of an "equity audit," which is "a study of the fairness of an institution's policies, programs, and practices."<sup>36</sup> Equity audits frequently involve the participation of or are conducted by third parties—likely on either a periodic or one-time basis. More specifically, equity audits "are typically (1) retroactive, (2) comprehensive/long/detailed, and (3) prepared by dedicated consultants."<sup>37</sup>

The CWT, however, sought a tool that could be integrated into the organization's regular operations as a water broker—as opposed to periodic but infrequent assessments of its work. Through their research for relevant models and best practices for Diversity, Inclusivity, and Equity programs, the student attorneys determined that the most appropriate approach would be to create an equity assessment tool that would be "(1) proactive, (2) applied to specific projects, and (3) [capable of implementation] by internal [CWT] staff."<sup>38</sup> As important as it was to create a tool that met the CWT's stated desires, it was equally important to create that tool so that it could be implemented and used regularly by CWT staff. As such, the student attorneys thoroughly reviewed different forms and documents then used by the CWT staff to get an appreciation for style and format preferences.

After almost two hundred combined hours through the academic year, the student attorneys ultimately presented a truly unprecedented and novel tool to the CWT.<sup>39</sup> The Equity Assessment Tool (the "Tool"), as delivered to the CWT, was not designed to be the final iteration of the tool, but the first

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process of translating each of its guides to Spanish and changing "Citizen's" to "People's" or "Los Gentes."

<sup>36</sup> MID-ATL. EQUITY CONSORTIUM, EQUITY AUDIT: 2021 1, <https://maec.org/wp-content/uploads/2021/02/Preview-MAEC-Equity-Audit-2021.pdf> [<https://perma.cc/N6ZC-8RRK>].

<sup>37</sup> E-mail from Student Attorneys to Professor Patience Crowder (Oct. 20, 2022) (on file with CED Clinic Client File).

<sup>38</sup> *See Id.*

<sup>39</sup> *See An Exciting Development for Colorado Water Trust's Equity Goals*, *supra* note 9.

iteration with expectations that the Tool would evolve over time as the CWT staff worked to integrate it into the CWT's project decision-making matrices. The initial draft of the Tool was designed to provide both general education about DEI best practices and strategies as well as a series of prompts/questions that would help CWT staff think critically about the REI implications of its proposed projects.

The initial Tool was organized into five distinct sections. Section I: Equity Assessment Tool Introduction and Explanation "provides context and definitions for the Tool user, describes how the Tool works, and prompts the user to define each project's goals and geographic area."<sup>40</sup> Section I also provides context for the remaining four sections of the Tool, which comprise the main body of the Tool as determined through the student attorneys' communications with the REI Committee. These remaining sections are (i) Demographics: Race and Hispanic & Latino Origin; (ii) Demographics: Age, Sex, Income, Employment, and Citizenship; (iii) Human Environment; and (iv) Community Outreach and Project Partners. Each of these four sections begins with a Context and Background overview that explains both the subject matter of the section and its potential equity impacts.<sup>41</sup>

Each of the four sections also includes a list of Equity Assessment Questions that are essential for CWT staff to complete. Each section is designed to encourage a CWT staff member to contemplate the pertinent topic by asking specific questions. Generally, the questions are intended to be flexible and capable of being "engaged with at various stages in each project, depending on project circumstances and organizational needs."<sup>42</sup> This means the Tool may be consulted and completed during different phases of the CWT's interactions with a water transaction, such as during

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<sup>40</sup> See E-mail from Student Attorneys to the Colo. Water Tr. (Oct. 20, 2022) (on file with CED Clinic Client File).

<sup>41</sup> See *Id.*

<sup>42</sup> See *Id.*



the planning phase of a project, during the initial phase of a project, or at some point in the future to assess a project's effects on equity over time.<sup>43</sup> Finally, in addition to the actual Tool, the student attorneys provided an advice memo to CWT detailing their recommendations for implementing the Tool.

Why assign such a project in a transactional law/CED Clinic? Overall, this representation checked all the boxes. As is typical with transactional projects, the student attorneys engaged with both legal and nonlegal research to reach their conclusions, including water law, survey design, sociology, as well as DEI strategies and best practices. In addition, other lawyering skills deployed included project management, due diligence, drafting and other writing skills, and oral communication and presentation skills in that the students presented initial questions and findings to Professor Romero, the CWT's REI Committee, and the final draft of the Tool to the Board of Directors. Most fundamentally, the student attorneys learned that "neutrality" is not an actuality in transactional law, meaning that the transaction could have negative externalities for communities of color regardless of the race-neutral terms governing a transaction.<sup>44</sup> As such, the student attorneys created value for the CWT and the various types of parties that may be impacted by its projects.

### III. THE RACIAL JUSTICE EDDY

This was a significant collaboration between law professors who are concerned about racial justice—as, honestly, all law professors should be given that the "quality of justice" is in the preamble of the Model Rules of Professional Conduct for lawyers.<sup>45</sup> In addition, American Bar Association

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<sup>43</sup> *See Id.*

<sup>44</sup> "Neutrality" or, more specifically, the lack of neutrality in law, is a specific tenet of Critical Race Theory; See, e.g., Dorothy A. Brown, *Fighting Racism in the Twenty-First Century*, 61 WASH. AND LEE L. REV. 1485, 86 (2004).

<sup>45</sup> MODEL RULES OF PRO. CONDUCT PMBL. (AM. BAR ASS'N 2024).

accreditation may well demand every law school provide opportunities for its students to not only learn about, but have strategies to deal with “bias, cross-cultural competency, and racism” as they encounter it in their practice and in relation to best meeting the needs of their future clients.<sup>46</sup> We suspect that there is no clinic in existence or yet to be formed that cannot somehow contribute to the advancement of environmental justice efforts—particularly during this period of retrenchment around racial justice issues.<sup>47</sup> This collaboration did not just yield an isolated value for a client, but, through thoughtful and thorough research and design, it produced a tool that is now a replicable model for other environmental nonprofit organizations that want to align their missions with advancing racial justice.

We are also mindful of continued, sustained, and interdisciplinary engagement with the organization. Professor Romero is working with Dr. Katie Grote, one of the Postdoctoral Fellows at the University of Denver’s Interdisciplinary Research Institute for the Study of (in)Equality, to help the CWT operationalize the Tool. Dr. Grote is a geographer and one of the nation’s emerging experts on re-framing Environmental Impact Statements from an Indigenous perspective.<sup>48</sup> Dr. Grote will bring a geographer’s eye

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<sup>46</sup> AM. BAR ASSN’ SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REVISIONS TO THE 2021-2022 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2 (2022), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2021-2022/21-22-standards-revisions-aug-22.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/21-22-standards-revisions-aug-22.pdf) [<https://perma.cc/TJ9L-TKNW>] (requiring that law schools “shall provide education to law students on bias, cross-cultural competency, and racism”).

<sup>47</sup> Professor Romero details some of this retrenchment, particularly in higher education and law schools, in Tom I. Romero, II, *A RPL in Time: A Brown Buffalo’s Observations on the On-Going Struggle of Civic and Racial Nationalism in Higher Education – Circa 2023*, DENV. L. REV. (forthcoming 2024).

<sup>48</sup> See, e.g., Katie M. Grote, *Indigenous Representation in U.S. Environmental Assessments* (2023) (Ph.D. Dissertation, University of Kansas); Katie M. Grote, *Controlling the Narrative: Critiquing the Geopolitical Narratives of U.S. Environmental Impact Assessments and Exclusion of Indigenous Communities*, ENV’T AND PLAN. F: PHIL., THEORY, MODELS, METHODS AND PRAC. (2022); Katie M. Grote & Jay T. Johnson, *Pipelines, Protectors, and Settler Colonialism: Media Representations of the Dakota Access Pipeline Protest*, 11 SETTLER COLONIAL STUD. 487–511 (2021).

and an ally's positionality to carefully and respectfully implement the tool for the organization.

And, as "eddies" mark hazards in rivers, we know that at least in the world of water rights in states like Colorado, equity and related racial justice tools might be viewed with skepticism and even contempt by practitioners in the field. Toward that concern, we also note the work of many non-profit environmental organizations, like the CWT, that were themselves forged to be disrupters to deal with crises in which new lenses, new ways of thinking, and new visions of a sustainable future were needed. To be sure, the ongoing environmental and climate crises that catalyzed the creation of organizations like the CWT over twenty years ago are connected in profound and important ways to the racial injustice crises of today. We thus encourage non-profits like the CWT to lean into their own DNA as novel thinkers, as it is likely that all of their organizations have well-developed and effective tools to overcome doubt and skepticism about their own goals and objectives.

In 1963, Dr. Martin Luther King, Jr. delivered his famous "I Have a Dream" speech on the steps of the Lincoln Memorial.<sup>49</sup> When Dr. King quoted the Christian New Testament to demand that "justice rolls down like waters and righteousness like a mighty stream," he was implicating every person and every organization in the project of dismantling racial injustice.<sup>50</sup> It is an ethical obligation to be substantively engaged with the ongoing and interconnected crises of our times. We find Dr. King's direct connection of racial justice and water particularly powerful in the context of this essay. We therefore make a call to action toward a greater collaboration between law schools and environmental organizations working for greater

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<sup>49</sup> Martin Luther King, Jr. "I Have a Dream" (Aug. 28, 1963) [https://avalon.law.yale.edu/20th\\_century/mlk01.asp](https://avalon.law.yale.edu/20th_century/mlk01.asp) [<https://perma.cc/R4JG-FULE>].

<sup>50</sup> Nancy LeTourneau, "Until Justice Rolls Down Like Waters," WASH. MONTHLY (Nov. 28, 2014), <https://washingtonmonthly.com/2014/11/28/until-justice-rolls-down-like-waters-2/> [<https://perma.cc/7W9T-XZHS>].

equity and inclusion for all humans to the natural landscapes and resources of the world that we inhabit and rely on.