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Keynote Presentation by Professor Camille Pannu

**THE UNIVERSITY OF DENVER WATER LAW REVIEW
ELEVENTH ANNUAL SYMPOSIUM: FORGING SOVEREIGNTY, SELF
DETERMINATION, AND SOLIDARITY THROUGH WATER LAW**

Denver, Colorado

March 30, 2018

KEYNOTE PRESENTATION BY PROFESSOR CAMILLE PANNU

Bruce Smith, Dean of the University of Denver Sturm College of Law, introduced Professor Camille Pannu, the Director of the Aoki Water Justice Clinic at the University of California Davis School of Law as the Keynote speaker for this year's symposium. He lauded the self-avowed "hell-raiser" and her work improving the sustainability of rural water systems, advocating for greater inclusion of rural and low-income communities in water management systems, and ensuring that all citizens of California have access to safe, clean, and affordable drinking water. Dean Smith noted that there could be no one better or more authentic than Professor Pannu to speak on water governance through a racial and social justice lens.

Professor Pannu began by framing the presentation as one focused on human dignity. Specifically, she wanted to discuss how race and poverty have influenced this country's history on who has had access to water. She specifically noted that the United States has reached a crucial point where there are national discussions on inequality and its effects on access to water. She pointed out that the topic really hit national news with the disaster in Flint, Michigan, but news coverage has broadened with discussions about the colonias in the rural Southwest, the Standing Rock Sioux Tribe's access to water, and Hurricane Maria's decimation of infrastructure in Puerto Rico. Through these discussions, the nation has begun to understand how our systems of water management have created and perpetuated issues of water inequality.

Professor Pannu's goal is to stir up the usual discourse on water policy and uncover the human face that frequently gets mired within the conversations on "what is water law." Particularly, she wanted to discuss the specific role that water policy has played in vulnerable communities. She expressly asserts that water inequality is a racial issue, not just a poverty issue.

To illustrate the current level of water inequality in the United States, Professor Pannu listed some shocking statistics. One-fifth of Americans lack safe access to water, and another one-fourth of Americans have no access to public water. That amounts to nearly one-half of the population of a remarkably affluent country being water insecure. Shockingly, at least one million households in the U.S. completely lack plumbing. The data further shows that twelve percent of the population lacks access to affordable water, and by 2022, one-third of Americans will not be able to pay their water bill. Lack of access to water has cascading effects that can destroy the lives of already disadvantaged people. In many states, not having access to safe drinking water is considered child neglect—the state can remove children from a home for this reason alone. Places like Flint, Michigan can require you to pay for the contaminated water that you cannot use; if you do not pay, the state can put a lien on your house.

Professor Pannu proposed looking at the issue of water inequality in three different parts: lack of access, lack of quality, and lack of supply. The lack of

access to public piped water systems is most common in rural areas. A lack of quality is seen in impoverished parts of cities, and lack of supply occurs where fights over water rights prevent individuals from accessing an existing supply of safe water. She then cited some troubling statistics for California that illustrate these three different sub-topics. In California, at least one million—and as many as three million—people lack safe water. This is most prevalent in California's agricultural belt. The city neighborhoods that experience a lack of water quality are almost exclusively low-income neighborhoods of color. Specifically, black children in cities with otherwise safe water systems are three times more likely to have lead from piped water in their blood than their peers. Latinos in California are more likely to be exposed to nitrates, an agricultural pollutant that cannot be boiled out of water, and are the most likely group to lack access to water infrastructure at all. Also, tribal water systems are twice as likely to violate all of the state's health standards.

After capturing the audience's attention with these jarring statistics, Professor Pannu continued her discussion by turning to the topic of human dignity. Although she would prefer to let community members tell their own stories, she was not able to bring individuals with her for this symposium.

Professor Pannu's first anecdote involved the Matheny Tract community, which sits right on the edge of a comparatively wealthy city with a long history of segregation—Tulare. Matheny Tract was initially developed as a farm labor camp before people of color were allowed to live within the city limits of Tulare. However, it later became a community of self-determination—a place where those in poverty could work together to survive and make a home despite societal injustices. Even after the civil rights movement, the county of Tulare propagated a formal policy of cutting funds from low income communities of color—a practice that left Matheny Tract in the grips of poverty for forty years. This policy was only officially changed in 2010. Now this largely rural county lacks the money to fix the problems that their policy created. The biggest water problem faced by Matheny Tract is a staggeringly high arsenic concentration, which is ten percent by volume in their water. No one in the community drinks or cooks with this water, but several community members have developed arsenic poisoning from showering alone.

After setting the scene of Matheny Tract and Tulare County, Professor Pannu dove into the purposeful injustice that the City of Tulare attempted to commit. The City of Tulare wanted to grow, but annexation of Matheny Tract would be too expensive because of eminent domain costs. The City instead decided to place industrial sites right outside and around Matheny Tract in an effort to push inhabitants out of the area. First, the City built a sewage treatment plant just outside Matheny Tract, yet refused to process sewage from the Matheny community for fear of encouraging its members to stay. Aside from the irony and humiliation of living immediately adjacent to a sewage treatment plant while still being forced to use septic tanks, the community members were subsequently subjected to Tulare's campaign to move heavy industrial sites to the fields surrounding Matheny Tract. Such sites would send already terrible air pollution levels through the roof. The City's goal in this campaign was to both dissuade inhabitants from staying in Matheny Tract and to drive down the property value so that future annexation would be less costly.

Fortunately, Professor Pannu reassured, Matheny Tract began to organize,

and one vocal community member, Reina, became the godmother, or “*madrina*,” of the water movement in Matheny Tract. Her involvement led to help and support from California Rural Legal Assistance. With this aid, the community sued Tulare multiple times and won with a consent decree. This decree ordered the city of Tulare to extend sewer and drinking water access to Matheny Tract within three years. Tulare then received a large grant to build the distribution system to Matheny Tract. Despite building the system, Tulare refused to turn on the water, claiming water shortages from the drought. However, Tulare did have water and was selling it illegally to housing developers outside the city instead of to the Matheny Tract community. The community had to sue again to enforce the decree. Meanwhile, Tulare began attempting to shrink its borders through land use agencies away from the industrial sites so as to avoid having to provide water to Matheny Tract. Fortunately, Reina, the *madrina*, was there to object to the changes in land use and prevent this injustice. When the community found out that they had been denied water, Reina summed up their feelings by saying, “They treat us as if we were animals, as if we were not human. First, they tell us there is no water. Now they admit there is water, but they have decided that it is better to give that water to contractors who are building new housing developments. And they leave us here, always, with contaminated water.”

Professor Pannu shared this story to get at the heart of the water inequality issue. She felt that she cannot adequately express the violence that is done when people are denied access to safe water. These communities have been treated with horrific racism and shown only contempt for their poverty, but the discriminatory treatment has been wrapped in the neutral language of city management. Professor Pannu stressed the fact that Matheny Tract is just one example, and that there are hundreds of communities just like Matheny Tract in California alone.

Fortunately, changes are taking place in California. First, the state has adopted the right to water as a basic human right. California also authorized special funding for the rural communities that lack access to safe water. Simultaneously, a bill that gave the state water board the power to mandate consolidations was snuck in under the radar through a budget writer. Now, if the state identifies a low-income community that has a chronically unsafe water system, the state can pay for and force merge such systems with other nearby systems. Because of these changes, Matheny Tract is now connected to a safe water system as of December 2016.

Next, Professor Pannu noted that the communities that have suffered like Matheny Tract have interesting commonalities. Almost all of these communities started as labor camps, freedom colonies, or other communities of self-determination. All these communities were excluded from access to education and economic opportunity and were also denied access to funding. The active practice of racial segregation only furthered the inequalities suffered by these communities.

Professor Pannu offered another example of racial annexation practices found in the San Joaquin Valley. Cities in the valley would strategically annex white communities to dilute the Latino vote. She described these instances to help show the extent to which land use laws, local government laws, and water coalesce. She argued that as water practitioners, we must understand that a

social justice lens is necessary to fully understand the history of what we have done. The only way to believe that water is distributed without discrimination is to view water without any reference to history and to be comfortable with the affluent controlling access to water for all. Professor Pannu could personally attest to the movements on these issues. The changes in California occurred because of community advocacy. Once advocates have lawyers, they not only change individual systems, but they also change the law.

California set aside massive funding for low-income communities that lack access to safe water. However, the state unwittingly made access to that funding incredibly difficult for rural communities. Fortunately, Professor Pannu's clinic is able to provide legal help and education in this area. The clinic serves primarily as a transactional clinic that connects people in rural communities to the funding provided by the state. The clinic helps communities form water cooperatives, provides management training for funding qualification, and facilitates negotiations for contracts between groups that normally do not work together. All of the clinic's clients must meet the state's poverty requirements. Therefore, the clinic works exclusively with low-income communities. The clinic focuses its resources on three areas of water law that are underserved: transactional law, policy advocacy, and strategic research. In their first semester in the clinic, students learn to be community lawyers by combining knowledge of water law and business law. In their second semester, students take on projects that further water justice in the state of California. The clinic aims to render aid to the immediate problem of safe water access in marginalized communities and to help the state think more strategically and holistically about how to move beyond its current policy predicament by establishing more equitable and socially conscious rules regarding water.

Professor Pannu concluded her presentation with a charge to the audience: think about devoting some of your time or practice to help tackle the water justice issues that are pervasive in our country today.

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**BUILDING MUNICIPAL WATER SELF-DETERMINATION IN DIVERSE
METROPOLITAN COMMUNITIES**

The final panel of the day, titled "Building Municipal Water Self-Determination in Diverse Metropolitan Communities," explored how working-class and minority communities use, access, and are impacted by water. Tom Romero, Assistant Provost of Inclusive Excellence Research and Curriculum Initiatives and Professor of Law at the University of Denver Sturm College of Law, presided as moderator for the panel. The speakers came from a range of backgrounds, including Daniel J. Arnold, Staff Attorney for Denver Water, Lizeth Chacón, the Executive Director of the Colorado People's Alliance ("COPA"), and Khyla Craine, Assistant General Counsel for the NAACP.