

ENVIRONMENTAL AND BIODIVERSITY LAW CLINIC AT SOUTHWEST FORESTRY UNIVERSITY: A NEW ENVIRONMENTAL LAW CLINIC MODEL IN CHINA

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INTRODUCTION

No national comprehensive legal-aid system existed in China until 2003 when the State Council adopted the National Legal Aid Regulations.¹ The Regulations outlined the roles of the legal-aid centers affiliated with local justice bureaus, eligibility for legal aid, and the application procedure.² The Regulations also encouraged legal-aid services provided by organizations established by law schools and other non-governmental organizations.³ In fact, the movement for legal-aid systems in mainland China was first started by law schools. The first legal-aid center, Shehui Rouzhe Quanli Baohu Zhongxin (the Center for Protection of Rights of Disadvantaged Citizens), was established at Wuhan University in 1992.⁴ A group of Fudan University law students created Shanghai's first legal-aid center in 1996, even before the official legal-aid center was launched.⁵ In 1998, Professor Wang Canfa from China University of Political Science and Law initiated the first legal-aid center for pollution victims to address China's daunting environmental problems, which is now known as the Center for Legal Assistance to Pollution Victims (CLAPV).⁶

The growth of these legal-aid centers at the universities and the law students' desire to promote social justice through the application of law in the classroom to everyday realities sparked a great need for clinical education in China. With the support from the Ford Foundation and the China Law Society, clinical education was formally introduced at law schools in China in 1999.⁷ In September of 2000, seven different law schools located in Beijing, Wuhan, and Shanghai began to deliver clinical courses to their students, including classroom sessions and practical work in cooperation with the legal-aid centers.⁸

CLAPV was the first legal-aid center established to fight against pollution by using private tort law to seek compensation for poor victims

1. *Legal Aid*, CONG.-EXEC. COMMISSION ON CHINA, <https://perma.cc/PF2M-WTZ5> (last visited Nov. 29, 2016).

2. *Legal Aid in China*, CHINA LEGAL INFO. CTR., <https://perma.cc/J8FP-7P38> (last updated June 9, 2015).

3. Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 119, 125–26 (2005).

4. *Id.* at 118 n.2.

5. *Fudan University Student Legal Aid Center*, ZHICHENG PUB. INT. BLOG (July 18, 2012), <https://perma.cc/S9CZ-A94W>.

6. *2014 Ramon Magsaysay Awards: Anti-Pollution Lawyer Works for China's Poor*, PHIL. STAR, <https://perma.cc/CXF9-GNBB> (last updated Sept. 2, 2014).

7. Phan, *supra* note 3, at 119.

8. Zhen Zhen, *Clinic Legal Education in China*, MCGEORGE SCH. L., [HTTPS://PERMA.CC/97QY-7JCJ](https://perma.cc/97QY-7JCJ) (last visited Nov. 29, 2016).

suffering from pollution.⁹ China University of Political Science and Law, which CLAPV is affiliated with, created China's first environmental law clinical course in September of 2003.¹⁰ The clinicians' work mainly focused on answering questions from individual pollution victims, assisting staff attorneys at CLAPV in providing consultations to walk-in clients or answering hotline inquiries, and occasionally working on environmental tort cases. When CLAPV was established, the environmental legal system in China had not opened the door for legal advocates promoting citizen participation, such as requesting environmental information, participating in administrative approval processes, and requesting environmental law enforcement.¹¹ Very few environmental NGOs even existed at that time. The first grassroots environmental NGO in China, Friends of Nature, was founded in 1995.¹² Since the first clinical course was introduced in cooperation with CLAPV, more environmental law clinics have been established.¹³ However, different from CLAPV's legal assistance model, most of those environmental law clinics are either legislative clinics, focused on research and legislative services for government agencies, or simulation clinics, providing simulations, role-play, and mock-trial types of practical trainings to students.

After decades of rapid economic development, China faces considerable environmental and health challenges: public health is reeling. Cancer is now the leading cause of death in China and the Ministry of Environmental Protection has admitted that pollution can lead to cancer.¹⁴ Ambient air pollution alone is blamed for hundreds of thousands of deaths each year and nearly 100 million people lack access to safe drinking

9. 2014 Ramon Magsaysay Awards, *supra* note 6.

10. *Clinical Legal Education Course Subsidy Investigation Report*, CHINA U. POL. SCI. & L. (July 10, 2004), <https://perma.cc/5YKW-MF2C>.

11. China's Regulations on Open Government Information were adopted in 2007 and took effect on May 1, 2008, providing a legal basis for citizens to request government environmental information. Regulations of the People's Republic of China on Open Government Information (promulgated by the State Council, Jan. 17, 2007, effective May 1, 2008) CHINA L. CTR., Feb. 2009, at 1 (China). China's Law on Environmental Impact Assessment took effect in 2003 and allows citizens to participate in the decision-making process in Environmental Impact Assessment approval. Law of the People's Republic of China on Evaluation of Environmental Effects (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2002, effective Sept. 1, 2003), art. 5, 2012 P.R.C. LAWS.

12. Namju Lee, *The Development of Environmental NGOs in China: A Road to Civil Society?*, CHINA BRIEF (Nov. 22, 2006 5:00 AM), <https://perma.cc/8M7B-AJ2W>.

13. List of Env'tl. Law Clinics in China, China Counsel of Clinic Legal Educ. (Dec. 2015) (on file with journal).

14. Tom Phillips, *China Admits Pollution Has Caused 'Cancer Villages'*, TELEGRAPH (Feb. 22, 2013, 8:46 AM), <https://perma.cc/U995-G935>.

water.¹⁵ Faced with these pressing environmental problems, China's central government is now giving increased priority to environmental protection, pledging to strengthen environmental governance through rule of law and stronger public participation.¹⁶ It has engaged in legislative reform and, in some instances, has permitted local authorities to develop innovative measures to address these problems.¹⁷ The local innovations include establishing specialized environmental courts and expanding the standing doctrine to allow environmental NGOs to bring enforcement actions.¹⁸ In order to make these innovations work, many places in China need legal institutions and advocates to test the boundaries of the new laws and regulations in both administrative and judicial forums.

This Article aims to introduce a new environmental law clinic in Yunnan Province, which represents a new clinical education model in China that may address these critical needs. Part I of this article provides an overview of the background, establishment, and operation of the Environmental and Biodiversity Law Clinic (EBLC) at Southwest Forestry University. Part II focuses on innovative methods that the EBLC uses in training the students and acts as an advocacy center, linking stakeholders in the region to enhance enforcement and implementation of environmental laws and promoting public interest litigation and public participation in environmental decision making. Part III briefly describes the capacity building and technical assistance role that United States institutions can play to promote the development of environmental law clinics in China. While this article recognizes the challenges facing the new environmental law clinic, it concludes that new models of environmental legal clinical education programs are a preliminary and necessary step toward environmental legal reform in China.

15. Dan Levin, *Study Links Polluted Air in China to 1.6 Million Deaths a Year*, N.Y. TIMES (Aug. 13, 2015), <https://perma.cc/695U-287E>; Liu Hongqiao, *China Set to Miss Safe Rural Drinking Water Targets*, CHINADIALOGUE (May 3, 2015), <https://perma.cc/NGM4-X635>.

16. Barbara Finamore, *New Weapons in the War on Pollution: China's Environmental Protection Law Amendments*, NAT. RESOURCES DEF. COUNCIL (Apr. 25, 2014), <https://perma.cc/534G-7FAN>.

17. *See generally* RACHEL E. STERN, ENVIRONMENTAL ENFORCEMENT AND THE RULE OF LAW IN CHINA 32–35 (2013) (giving a broad overview of the Chinese government's turn toward environmental protection).

18. Alex L. Wang & Jie Gao, *Environmental Courts and the Development of Environmental Public Interest Litigation in China*, 3 J. CT. INNOVATION 37, 38–39, 47 (2010).

I. PARTNERSHIP FOR ENVIRONMENTAL JUSTICE: THE ENVIRONMENTAL
AND BIODIVERSITY LAW CLINIC IN YUNNAN PROVINCE, CHINA

A. Background

Yunnan Province, China's southwestern frontier, has vast reserves of biological, mineral, and hydro-energy resources and is home to the largest number of ethnic minority groups in China.¹⁹ Yunnan is habitat for more than 60 percent of China's bio-species.²⁰ However, as an underdeveloped province in western China, Yunnan has been plagued by rapid urbanization, deforestation, and development of large-scale, extractive industries and hydro-power projects.²¹ Approximately 25 percent of the bio-species in Yunnan are threatened with extinction in this century due to human impact on the ecosystem.²² This degradation of natural resources and other environmental problems—such as water and air pollution, land erosion, flooding, and loss of species—directly impact the health, safety, and livelihood of Yunnan residents. Indigenous communities, as well as people in the neighboring provinces and countries are particularly affected.²³

Facing the challenges of economic development and conservation of ethnic culture and biodiversity, the Yunnan government has taken a number of progressive measures to advance environmental protection and conservation. In 2008, Yunnan established its first specialized environmental court in the Kunming Intermediate Court to hear these cases.²⁴ However, creating these courts has failed to generate the changes that the government intended, mainly that more cases would be brought to seek redress for many of the existing environmental and natural resource issues.²⁵ The reasons for this are manifold and include: a lack of experienced legal advocates, the difficulties of bringing and proving an environmental tort, and the lack of a cause of action similar to citizen suits in the United States that enable a party to sue on behalf of the public interest to enforce the law and to seek remediation to protect the

19. Jianchu Xu et al., *Integrating Sacred Knowledge for Conservation: Cultures and Landscapes in Southwest China*, 10 *ECOLOGY & SOC'Y* 151, 156 (2005).

20. *Yunnan*, ENCYCLOPEDIA BRITANNICA, [HTTPS://PERMA.CC/6NNU-UTYE](https://perma.cc/6NNU-UTYE) (last visited Sept. 1, 2016).

21. Yuming Yang et al., *Biodiversity and Biodiversity Conservation in Yunnan, China*, 13 *BIODIVERSITY & CONSERVATION* 813, 822 (2004).

22. *Id.* at 817.

23. *Id.* at 821.

24. Wang & Gao, *supra* note 18, at 40.

25. *Id.* at 41–42.

environment.²⁶ To overcome some of these barriers, the Yunnan judiciary, in 2009, issued a set of guidelines that explicitly encouraged courts in Yunnan to accept cases brought by environmental NGOs and procuratorates on behalf of the public interest to protect the environment.²⁷ The Intermediate Court in Yunnan's capital, Kunming, promulgated court rules that broadened the legal standing for NGOs, relevant government agencies, and procuratorates to sue on behalf of the public interest to address environmental and natural resource problems.²⁸

These measures recognize that civil society has a role to play in advancing environmental governance. Taking advantage of this unique opportunity, the U.S.-China Partnership for Environmental Law at Vermont Law School and Southwest Forestry University (SWFU) developed a partnership for environmental justice projects.²⁹ The key component of this partnership is to create an environmental law clinical program at SWFU, which will become an environmental legal resource center for the region and open new doors for citizens to gain access to legal services, affect the implementation of existing laws, and cultivate a legal ecosystem that will enable and encourage the citizenry to be legal actors who serve the public interest.³⁰

The Environmental and Biodiversity Law Clinic at SWFU was formally launched on January 16, 2013.³¹ The clinic, the first of its kind in Yunnan Province, aims to: train students to become innovative legal advocates; provide legal and technical services to NGOs, communities, and underserved, vulnerable citizens; and link actors and stakeholders to address the environmental problems in Yunnan Province.³² The launch event also served as a forum, engaging stakeholders in the region to build connections, share experiences, and collaborate on advocacy projects.³³

B. Operations

Led by Professor Chen Yue, an attorney and the project leader from SWFU, the EBLC team consists of the program director, a faculty fellow

26. See generally *id.* at 47–50 (explaining the uncertainty in the new environmental court system).

27. *Id.* at 47.

28. *Id.*

29. *Winter 2015: Asia Partnerships Newsletter*, U.S.-ASIA PARTNERSHIP ENVTL. L. (Vt. Law Sch., South Royalton, Vt.), Winter 2015, at 1, <https://perma.cc/6PBC-W5CN>.

30. *Id.*

31. *Winter 2014: Asia Partnerships Newsletter*, U.S.-ASIA PARTNERSHIP ENVTL. L. (Vt. Law Sch., South Royalton, Vt.), Winter 2014, at 3, <https://perma.cc/2X8T-NMRV>.

32. *Id.*

33. *Id.*

from the Environmental Science and Engineering Department, a staff attorney, an environmental impact assessment consultant as program officer, a full-time program coordinator, and a part-time program assistant.

EBLC's environmental law clinical education is a year-long program. The clinic recruits student clinicians generally in March, the beginning of the spring semester of the academic year. In addition to law students, the clinic also recruits students with backgrounds in environmental engineering, forestry, and ecological science with enthusiasm in environmental public interest activities, strong social responsibility, and teamwork spirit. Four cohorts of student clinicians have completed the clinical course since 2013. On average, each cohort has sixteen students and nine students are enrolled in the 2016 session.

The clinical course is comprised of both classroom training and practical case/project work.³⁴ The classroom training includes two components. The first component is made up of five sessions that focus on basic lawyering skills, professionalism and ethical rules, China's environmental legal framework, basic regulatory instruments and administrative procedures, and litigation related skills.³⁵ The second component is comprised of another four sessions that focus on specific environmental legal advocacy tools, such as public participation in Environmental Impact Assessments (EIA), access to environmental information, learning to read environmental quality and emission reports, gaining familiarity with wetland and biodiversity protection laws.³⁶ In addition to classroom trainings, student clinicians also participate in case strategy meetings and team and individual supervision meetings.³⁷ The students work in teams of three or four on at least one case or project. Student teams perform some of their case or project work during regularly-scheduled office hours in the clinic space, currently housed in SWFU's International and Exchange Building. Students also work on their cases and projects on their own, outside of office hours.

As of the end of March of 2016, the clinic had opened 89 cases in which clinicians provided legal representation and consultation to individuals and NGOs related to environmental information disclosure, environmental enforcement requests, application for administrative reviews, strategic impact litigation, and legal assistance to workers suffering from the effects of pollution. Among these 89 cases, 24 resulted in a positive

34. ENVIRONMENTAL AND BIODIVERSITY LAW CLINIC AT SOUTHWEST FORESTRY UNIVERSITY, STUDENT HANDBOOK 1.

35. *Id.* at 2.

36. *Id.* at 7-10.

37. *Id.* at 3-5.

outcome for clients or the environment. Many of these cases are either open government information requests (OGI requests) to obtain environmental information related to pollution sources or enforcement requests filed with environmental protection bureaus to urge them to take enforcement actions. In these cases, the clinic worked closely with six national and local environmental NGOs, and one international NGO. By filing these OGI requests and enforcement requests, the students experience the process and reality of government information disclosure and the administrative enforcement system. The students also learn to interact with government officials and to integrate the information that they obtained into advice for the NGOs' decision-making process. Some examples of these cases and projects are illustrated in the next section.

In addition, the clinic helped create an environmental legal professionals network in Yunnan Province. The clinic, collaborating with legal practitioners in the network, also worked on a legislative research project and provided comments on pending pieces of legislation. The clinic submitted comments to nine pending pieces of legislation, including the amendments to China's Environmental Protection Law and the Judicial Interpretation on Environmental Public Interest Litigation. The clinic provided assistance to two NGOs to propose legal reform on wetland law and public participation in the EIA approval process.

C. Challenges

One of the key challenges that the EBLC faced when it began operation was a lack of cases and clients. The reason is threefold. First and foremost, very few environmental NGOs exist and operate in a limited space in Yunnan Province. Most environmental NGOs engage in environmental education rather than advocacy. They are skeptical about using legal advocacy tools due to lack of capacity or fear of confrontation with local governments. Environmental government information requests, enforcement requests, and environmental public interest litigation tools are new to most of the environmental NGOs in China. Second, those national environmental NGOs that aim to promote environmental rule of law and are active in legal advocacy, do not have local knowledge of environmental problems in Yunnan Province. Third, citizens suffering from the effects of pollution in Yunnan province tend to seek remedies through government mediation or petition instead of resorting to legal action. In the past three years, CLAPV only provided legal-aid support to a group of Tibetans in

Yunnan Province on an allegedly illegal mining case.³⁸ The main task for the clinic when it first started was to create opportunities for students to learn from practice, addressing real environmental problems in the region.

Another challenge is that the student clinicians are undergraduate students. Different from the United States law school system, Chinese schools offer a basic law degree at the undergraduate level.³⁹ Most of the clinicians enrolled in the program are in their third and fourth year of their legal studies. Compared to graduate students, they are less mature and have limited knowledge of laws and society. The clinic needs to identify cases and projects that are suitable for undergraduate students in order to provide an enhanced learning experience and training for them.

Because the clinic recruits non-law students and believes that an interdisciplinary approach to address environmental problems will be more effective, the clinic also uses methods that can enable non-law students to apply their specialized fields to legal and policy issues, and teaches all students to communicate effectively and work productively in an interdisciplinary setting.

II. A NEW ENVIRONMENTAL LEGAL CLINIC MODEL IN CHINA

A. Proactively Identify Environmental Problems, Develop Legal Advocacy Cases, and Partner with NGOs to Address the Problems

To counter the challenges mentioned above, the first innovative method the clinic tried, which is very different from other environmental legal clinics in China, was to proactively identify environmental problems and make the information available to local communities and NGOs. The clinic teaches the students to use OGI requests and conduct field investigations to understand the environmental problems that impact the local communities.⁴⁰ When it first started, EBLC identified Fuxian Lake in Yuxi City as the focal area to collect information and make OGI requests to identify environmental problems.⁴¹ EBLC made requests for and collected: records and documents related to pollution sources around the lakes, records of compliance, municipal and county-level development plans, and

38. Case Chart, Ctr. for Legal Assistance to Pollution Victims (unpublished excel spreadsheet) (on file with journal).

39. Cara Tang, *Comparing the Legal Education in the U.S. and China*, MINN. J. INT'L L. (Nov. 22, 2015), <https://perma.cc/X2LR-PCXT>.

40. PowerPoint Presentation, Yue Chen, Associate Professor, Environmental and Biodiversity Law Clinic in Yunnan Province (July 25, 2013), <https://perma.cc/7SLH-H6HX>.

41. *Id.*

water quality monitoring results.⁴² EBLC made this information available to NGOs and the communities near the lakes to empower them to develop and participate in future water quality monitoring and enforcement actions.⁴³ In addition, EBLC organized field investigations at the sites to conduct interviews with local residents and collect water samples to understand the problems.⁴⁴

These initial OGI requests and field investigations led to three specific environmental problems that the clinic addressed by developing legal advocacy cases and partnerships with NGOs and local communities. First, the clinic located real-estate development projects under construction around the protected zone of Fuxian Lake.⁴⁵ These luxury, lake-view villas, five-star hotels, resorts, and golf courses were built or being constructed without proper EIA approvals and water extraction permits.⁴⁶ The clinic developed a partnership with Chongqing Liangjiang Voluntary Service Center (CLVSC), a Chongqing-based environmental NGO, to develop legal advocacy cases on this matter.⁴⁷ The student clinicians, supervised by staff attorneys, helped CLVSC file OGI and enforcement requests to urge local authorities to take enforcement actions against these illegal development projects.⁴⁸ They obtained many important documents that were not disclosed to the public, including the Control Plan for Fuxian-Xingyun Lake Ecological Construction and Tourism Development Experiment Zone; Fuxian Lake's 12th Five-Year Plan on Water Pollution Control; the EIA report on Xianhu Shanshui International Recreation and Tourist Park; and the EIA report on Chengjiang County Industry Park (2007-2020).⁴⁹ Due to media attention and the clinic's efforts in monitoring the real-estate development projects around Fuxian Lake, the Fuxian Lake Management Bureau recently took enforcement actions against four developers who violated the law.⁵⁰ On October 28, 2014, in a press conference, the Fuxian-Xingyun Lake Reform Committee of the Yuxi Prefecture Government announced that the government had issued fines and orders to those four

42. *Id.*

43. *Id.*

44. *Id.*

45. Zhou Dequn, *Why Can't We Protect China's Cleanest Freshwater Lake?*, EAST BY SOUTHEAST (July 1, 2013 3:27 PM), <https://perma.cc/3HRD-SMNV>.

46. *Id.*

47. Chen, *supra* note 40.

48. See generally *Chongqing Liangjiang Voluntary Service Center*, SOUTH CHINA ENV'T. FUND, [HTTPS://PERMA.CC/FU75-2U96](https://perma.cc/FU75-2U96) (last visited Nov. 29, 2016) (explaining the actions that the Service Center takes).

49. QUARTERLY REPORT NO. 6, ENVTL. & BIODIVERSITY LAW CLINIC 4 (Jan.-Mar. 2014) (unpublished report) (on file with journal).

50. *Fuxian Illegal Filling the Kowloon Sheng Jing was Fined 50,000*, YUNNAN NEWS ONLINE (Oct. 30, 2014, 10:33 AM), <https://perma.cc/BT36-YFBW>.

Another example of an environmental problem discovered through this innovative approach is the Dongxishao Phosphorus Industry Park pollution problem near the Fuxian Lake.⁵³ Through the site visits and interviews with local residents, the clinic discovered that a wastewater treatment plant in the Dongxishao Phosphorus Industry Park had not obtained “inspection approval” to verify that it had complied with the “three simultaneous” requirements.⁵⁴ These requirements are that construction projects must be designed, constructed, and operated simultaneously with the design, construction, and operation of waste treatment facilities.⁵⁵ The residents believed that the plant had been discharging wastewater collected from facilities in the park into Fuxian Lake without proper treatment.⁵⁶ In addition, local residents reported that the facilities in the park did not have proper environmental and safety measures in place to protect workers and residents from exposure to yellow phosphorus, a major raw material processed by the facilities that is listed as a hazardous chemical in China.⁵⁷



Student clinicians at EBLC mapped Dongxishao Industry Park and its surrounding villages using the Google Earth application.

53. 2015 ANNUAL REPORT, ENVTL. & BIODIVERSITY LAW CLINIC 6 (2015) (on file with journal).

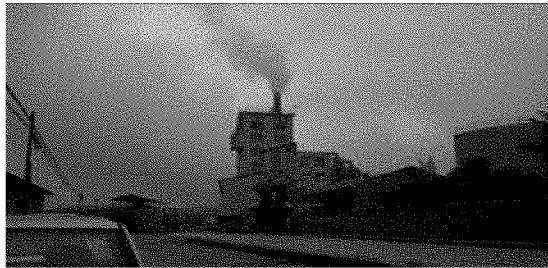
54. See CHARLES R. MCELWEE, ENVIRONMENTAL LAW IN CHINA: MANAGING RISK AND ENSURING COMPLIANCE 163–64 (2011) (describing the “three simultaneous” system under a patchwork of regulations and the Environmental Protection Law in China that requires any pollution control measures in an Environmental Impact Assessment to “be designed, constructed, and placed into operation *simultaneously* with the design, construction, and operation of the facility itself”).

55. *Id.*

56. QUARTERLY REPORT NO. 7, ENVTL. & BIODIVERSITY LAW CLINIC 4 (Apr.-June 2014) (unpublished report) (on file with journal).

57. QUARTERLY REPORT NO. 9, ENVTL. & BIODIVERSITY LAW CLINIC 3 (Oct.-Dec. 2014) (unpublished report) (on file with journal).

Some local villagers complained that the pollution from the Industry Park caused negative impacts on their health.⁵⁸ The clinic then initiated a case to investigate and address this matter. They developed relationships with local residents, assisted local residents with filing numerous OGI requests at various levels of government, filed administrative review requests, took water samples, and developed a long list of instances where the facilities in the Industry Park were not in compliance with the regulatory requirements.⁵⁹ After almost a year of legal advocacy efforts, the local Environmental Protection Bureaus (EPBs) finally took concrete enforcement actions in August of 2015.⁶⁰ The local EPB, along with local township government and other government agencies, issued enforcement and corrective orders to the ten phosphorus fertilizer companies and three cement plants located in the Industry Park.⁶¹ The purpose of these orders was to control air, water, and solid waste pollution in accordance with regulatory requirements.⁶² The EPB also acknowledged the wastewater treatment plant's leakage problem in the Industry Park and ordered the plants to install proper technology to prevent further leakage.⁶³ The correction plan and the subsequent enforcement orders by local government and EPB comprehensively addressed the key issues that the clinic raised in its enforcement requests and represented an important victory for the clinic's team and the local communities near the Industry Park.



Dongxishao Phosphorus Industry Park. Photo by LIU Xiang

58. Petition Letter from Env'tl. & Biodiversity Law Clinic to Dongxishao Env'tl. Prot. Bureau 4 (Mar. 6, 2015) (on file with journal).

59. Chen, *supra* note 40.

60. 2015 ANNUAL REPORT, *supra* note 53, at 8.

61. Notice from Cheng Jiang Cty. Env'tl. Prot. Bureau, Indus. Park Mgmt. Comm., Commerce & Tech. Bureau, & Jiucun Twp. People's Gov't to Dongxishao Industry Park Companies (Aug. 5, 2015) (on file with journal); *see also* Letter from Yuxi Env'tl. Prot. Bureau to Cheng Jiang Cty. Gov't (July 7, 2015) [hereinafter Yushihuan 2015 Document No. 78] (discussing the correction plan for the environmental issues in Cheng Jiang County's Dongxishai Industry Park) (on file with journal); *see also* Notice from Cheng Jiang Cty. Gov't Gen. Office to Dongxishao Industry Park Companies (July 20, 2015) [hereinafter Chengzhengfa 2015 Document No. 99] (discussing the environmental correction work plan related to the Dongxishao Industry Park) (on file with journal).

62. Chengzhengfa 2015 Document No. 99, *supra* note 61, at 2.

63. Yushihuan 2015 Document No. 78, *supra* note 61.

B. Multidisciplinary Approach

The EBLC collaborated with ecological and social scientists from Minzu University of China, Yunnan Agriculture University, Yunnan University, and the Geology Monitoring Station to conduct a study on the sustainability of the social and ecological systems (SESS) at Fuxian Lake.⁶⁴ This SES sustainability study involves a team of scholars and practitioners from the legal and scientific disciplines.⁶⁵ They have been reviewing and analyzing the data that EBLC has collected over the past two years concerning pollution sources around the lake, compliance records, municipal and county-level development plans, and water quality monitoring results.⁶⁶ The study aims to evaluate the data, identify the problems and potentialities of the complex systems at the lake, and to understand how a particular action or proposed solution may affect the SES.⁶⁷ From this understanding, the collaboration aims to develop an advocacy strategy to protect the systems.⁶⁸ Based on the initial study, the EBLC submitted comments on the draft amendments to Yunnan Province's Regulations on the Protection of Fuxian Lake in July of 2015.⁶⁹

The draft regulations highlight a key issue with the way the government approaches the protection of natural resources.⁷⁰ The draft regulations designate the areas within 100 meters of the entire shoreline as a protected zone and require all current residents to move out of the protected areas.⁷¹ However, the draft regulations allow real-estate development companies to build residential and commercial buildings just outside the protected zone.⁷² This approach reflects a policy of favoring development over protecting the rights of the local residents, many of whom have been in the area for many

64. QUARTERLY REPORT NO. 10, ENVTL. & BIODIVERSITY LAW CLINIC 4-5 (Jan.-Mar. 2015) (unpublished report) (on file with journal); INITIAL SCIENTIFIC INVESTIGATION REPORT ON FUXIAN LAKE, Cheng Gong 5 (Jan. 20, 2015) [hereinafter FUXIAN LAKE SCIENTIFIC REPORT] (unpublished report) (on file with journal).

65. QUARTERLY REPORT NO. 10, *supra* note 64, at 5; FUXIAN LAKE SCIENTIFIC REPORT, *supra* note 64.

66. FUXIAN LAKE SCIENTIFIC REPORT, *supra* note 64.

67. *Id.*

68. *Id.* at 20.

69. 2015 ANNUAL REPORT, *supra* note 53, at 19.

70. See *Table Comparing Pre and Post-Amendment Text to the Amendments to the Fuxian Lake Protection Regulations*, YUNNAN PROVINCIAL GOV'T LEGISLATIVE OFFICE (July 8, 2015, 2:39 PM), <https://perma.cc/V97S-RQYH> (comparing the text of the regulations before and after the amendments).

71. See *Fuxian Lake Protection Regulations* art. 4, § 1 and art 12 (adopted Sept. 29, 2016); The Implementation Plan of Fuxian Lake Ecological Environment Protection Pilot Projects, YUXI MUNICIPALITY GOV'T, § 5.3 (Sept. 2011), xxgk.yn.gov.cn/uploadfile/document_20120701/20121219175414219.doc.

72. Dequn, *supra* note 45.

generations.⁷³ It also fails to respect the local residents' traditional land-use practices and to assess whether these practices could contribute to the protection of the wetlands.⁷⁴ The EBLC's comments focus, among other things, on the 100-meter protection provision and suggest that the regulations provide for procedural rights for the public to be involved in the decision-making process before new management and development plans for Fuxian Lake are adopted.⁷⁵

C. Collaboration: Serving a Supporting Role in Environmental Public Interest Litigation

China's new Environmental Protection Law, which took effect on January 1, 2015, and the new Civil Procedure Law, together, provide standing for environmental NGOs that meet certain requirements to bring environmental civil public interest litigation (EPIL) across China.⁷⁶ To test the effectiveness of this new tool, CLAPV and Friends of Nature formed a national EPIL advocacy and support network to support NGOs who have standing to file EPIL test cases in courts.⁷⁷ EBLC actively participates in this network and collaborates with NGOs in the network serving a supporting role in identifying potential cases, drafting memoranda to develop a legal course of action, and drafting petition letters and litigation-related documents.⁷⁸ The clinic is currently working on three such cases, one of which challenges a chemical plant that is being built along the Nu River.⁷⁹ The plant allegedly poses serious environmental risks to the Lishu ethnic communities and the Nu river.⁸⁰

73. Wei Xing, *Yunnan Yuxi Fuxian Lake: The Plan to Restore the Lake by Relocating Houses, Hurt Residents but Attract Capital*, SOUTH WIND (June 23, 2015), <https://perma.cc/Q5WY-Z6R9>.

74. *Id.*

75. See Opinions and Recommendations on the Draft Amendments to the Fuxian Lake Protection Regulations from the Env'tl. & Biodiversity Law Clinic to the Standing Comm. of Yunnan People's Cong. 1–2 (Dec. 20, 2015) (on file with journal) (explaining that the residents were required to relocate and, therefore, no longer had control over the land).

76. Environmental Protection Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24th, 2014, effective Jan. 1, 2015), art. 58, EU-China Environmental Governance Programme; Civil Procedure Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 31, 2012, effective Aug. 31, 2012), art. 55, 2012 P.R.C. LAWS; Yanmei Lin & Jack Tuholske, *Field Notes From the Far East: China's New Public Interest Environmental Protection Law in Action*, 45 ENVTL. L. REP. 855, 855 (2015).

77. William Schulte, *Environmental Public Interest Litigation Training Workshop*, VT. L. SCH.: ASIA ENVTL. GOVERNANCE BLOG (June 21, 2016), <https://perma.cc/MA4A-WKUR>.

78. See *id.* (describing the course and generalizing the work done by students).

79. Stuart Leavenworth, *China May Shelve Plans to Build Dams on Its Last Wild River*, NAT'L GEOGRAPHIC (May 12, 2016), <https://perma.cc/J6VR-VYVF>.

80. *Id.*

III. THE ROLE OF TECHNICAL ASSISTANCE TO BUILD THE CAPACITY OF THE NEW CLINIC

A. Train the Trainer

In 2013, Professor Chen Yue spent two-and-a-half months in residency at VLS to receive hands-on training on how to run an environmental law clinic. VLS also supported the clinic's staff by observing the operation of CLAPV and the Huanzhu Law Firm, attending its case discussion sessions, and discussing cases for the clinic and collaborations with CLAPV's leading attorney, LIU Xiang. The VLS Partnership also assisted the EBLC team with developing its syllabus and student handbook.

B. On-Site and Long-Distance Training Programs

From 2013 to 2015, VLS delivered four on-site, three to four-day clinic capacity-building workshops to EBLC's staff, clinicians, and other advocates from NGOs. These trainings modeled the clinical education methods in the classroom setting and provided teaching instructions as well as case and research supervision.

For example, the first training sessions were held from January 16th through the 19th. Jack Tuholske (VLS Professor), Professor Liu Xiang (Managing Attorney at Huanzhu Law Firm), and Attorney Xia Jun (experienced environmental lawyer from Beijing Zhongzi Law Firm) were the primary trainers.⁸¹ The workshop trained a total of nine student clinicians, seven faculty members from the clinic, NGO advocates, and lawyers.⁸² The first two sessions included: an overview of environmental law practice in the United States and China, important elements of case analysis and litigation strategy, and the legal tools used in environmental enforcement actions brought by Chinese NGOs. The third session focused on evidence gathering, working with experts, conducting field investigations, case studies, and analysis of potential cases the clinic could handle. The workshop demonstrated to EBLC faculty and students how to initiate a case and discussed the pros and cons of taking on a particular case or project. The trainers also gave feedback about the clinic's draft curriculum and the strategy for finding potential cases and developing partnerships with local NGOs. The final session was a field trip to Fuxian Lake and Xingyun Lake.

81. *Winter 2014: Asia Partnerships Newsletter*, *supra* note 31, at 1, 3.

82. *Id.* at 3.



Professor Jack Tuholske with the fourth cohort of student clinicians. *Photo by ZHAO Chunli*



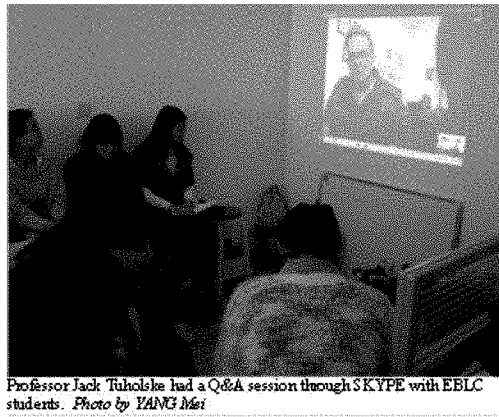
In addition to on-site training, VLS also used online training methods. EBLC currently handles cases related to wetlands protection and developing a comparative research project to design better legal tools for wetlands protection.⁸³ In order to build EBLC's capacity on wetlands protection law and offer perspective from the United States, VLS Professor Jack Tuholske provided an online training session to the clinic students on the United States legal regime on wetlands protection.⁸⁴ Professor Tuholske first assigned the students a briefing paper on Section 404 of the United States Clean Water Act, which regulates the filling and dredging of wetlands.⁸⁵ He then delivered an audio PowerPoint presentation to students to illustrate different types of wetlands, a permitting program for wetlands development, and enforcement of United States wetlands law. Professor Tuholske also designed a case scenario to test students' understanding of the materials. After the students completed the assignments, the VLS

83. *Winter 2015: Asia Partnerships Newsletter*, *supra* note 29, at 3.

84. *Id.*

85. *Id.*

Partnership and EBLC convened a virtual question and answer session between Professor Tuholske and the students in December of 2013. Despite the long distance, the students were able to raise questions and have a discussion with Professor Tuholske on issues, such as how to determine whether a piece of land is a wetland that requires a permit to develop, and how to mitigate the negative impact on wetlands through a permitting system. After the lesson, student clinicians were divided into four groups and tasked with writing an essay to analyze the difference between China's wetlands law and United States wetlands law. EBLC provided feedback to the Partnership that the exercise had enhanced students' understanding of wetlands regulations from a comparative perspective.



C. Participation in Case Strategies Discussion and Program Development

The Partnership program staff and faculty from VLS participated in the development discussions for the clinic's key case/project strategy and assisted the clinic with creating plans to ensure the clinic's sustainability.

CONCLUSION

The feature of EBLC at SWFU that makes it unique is that it works closely with environmental NGOs and local communities to tackle environmental problems. This represents a new environmental law clinic model that can promote the development of environmental civil public interest litigation and other public legal advocacy tools in the upcoming years. The Chinese government opened political and legal space for citizens to appeal for action by amending the Environmental Protection Law and

issuing judicial interpretations that permit environmental NGOs meeting certain requirements to bring EPIL.⁸⁶ As of December 28, 2015, the Supreme People's Court reported that forty-five EPIL cases had been filed by community service organizations (CSOs) and accepted by the courts under the new Environmental Protection Law.⁸⁷ However, the majority of these cases were brought by only two national environmental groups—Friends of Nature and a government-sponsored non-governmental organization, the China Biodiversity Conservation and Green Development Foundation.⁸⁸ One of the key challenges that local CSOs and national CSOs identified is that they lack experience and knowledge of legal advocacy, such as turning identification of environmental problems into potential EPIL cases.⁸⁹ While there might be lawyers who are interested in representing them in litigation, there are very few lawyers who can help them to develop the case by filing OGI requests and environmental enforcement requests.⁹⁰ Environmental legal clinical education programs, such as the EBLC at SWFU, will be able to fill the gap. Therefore, more efforts are needed to help China's law schools create new environmental law clinics and cultivate partnerships between NGOs and legal clinics in the same region. Although the new model of environmental legal clinical education programs in China is at a preliminary stage, it has the potential to play an important role in the development of China's environmental rule of law.

86. Karl S. Bourdeau & Daniel B. Schulson, *Citizen Suits: A Watershed Moment in Environmental Litigation?*, CHINA BUS. REV., <https://perma.cc/VQM4-ZJ2Y> (last updated Nov. 28, 2016).

87. Zheng Chen Siyi, *Supreme Court: This Year the Court Received a Total of 45 Cases of Environmental Public Interest Litigation*, SINA (Dec. 29, 2015, 11:55 AM), <https://perma.cc/LF4K-QHPA>.

88. Cui Zheng & Kong Lingyu, *Progress for NGOs Battling Polluters in Court*, CAIXINONLINE, (Dec. 3, 2015, 2:34 PM), <https://perma.cc/4Y72-Y89S>.

89. See Bo Zhang & Cong Cao, *Policy: Four Gaps in China's New Environmental Law*, NATURE (Jan. 21, 2015), <https://perma.cc/ZR3J-GPU9> (identifying the pitfalls of the new system).

90. *Id.*