RECOMMENDATION

RESOLVED, that the American Bar Association adopt a policy recognizing that every human being has the fundamental right to safe, clean, affordable water, and

RESOLVED, that the American Bar Association urges all federal, state, territorial, and local legislative bodies adopt laws and policies recognizing that every human being has the fundamental right to safe, clean, affordable water, and

FURTHER RESOLVED, that the American Bar Association works to support state and local legislation to protect access to safe, clean, affordable drinking water.
REPORT

Water is essential to life, liberty and the pursuit of happiness. Water nourishes our bodies, it fuels our economy, and its long-term equitable management maintains peaceful relations. Today, 884 million people do not have access to improved sources of drinking water, and 2.5 billion lack access to improved sanitation facilities. These water challenges are not faced by developing countries alone. The drinking water crisis in Flint, Michigan exposed the vulnerability of developed countries to water crises when insufficient resources are committed to water and water infrastructure. Acknowledging a human right to water will command the attention of our elected leaders and draw attention to the need to guarantee the availability of water to meet our current and future needs.

WATER SUSTAINS LIFE, TRADE AND SECURITY

Water is fundamental to our human existence, prosperity, and security. Without water, human beings die within three days. Water flows through an elaborate and complex hydrologic cycle that feeds our crops and generates our food supply, fills our rivers and aquifers, sustains wildlife, and supports innovation and economic growth. Many of the products that we use on a daily basis—from cars fueled by gasoline to computers to medical instruments—require water at some point in their manufacturing, use or disposal.

Water scarcity and polluted waterways breed conflict, poverty, and economic uncertainty. Water contaminated with bacteria and worms infect people with water-borne diseases that prevent them from going to school and work. Sickness increases healthcare bills and reduces income, threatening the economic stability of families. Wells located outside of communities means children, primarily young girls and women, spend their day walking to retrieve drinking water rather than in school. This perpetuates gender inequality and reduces the future earning potential of women. Exposure to toxic chemicals, like lead in Flint, can cause long-term health problems and cost communities millions of dollars in litigation, environmental remediation, and future healthcare expenses. Too much, too little, and too polluted water all pose significant risks to human survival and prosperity.

FEDERAL, STATE, LOCAL LEGISLATURES: HUMAN RIGHT TO WATER

Recognizing a human right to safe, clean, affordable water supports governments’ existing role in providing water services. Institutionalizing a human right to safe, clean, affordable drinking water explicitly acknowledges a responsibility and authority already exercised by federal, state, and local governments.

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1 Declaration of Independence.
What kind of commitment is the government making in recognizing the human right to water? In acknowledging the human right to water, the government is making three commitments:

1. To ensure a safe and sufficient amount of drinking water for personal and domestic uses
2. To ensure adequate access to sanitation
3. To be effective stewards of water used for drinking water.

Fulfilling these commitments will ensure that the most basic needs of humans are met and that our economy remains vibrant and our domestic security strong. Without access to water or sanitation, humans cannot be full, contributing members of society.

To ensure a safe and sufficient amount of drinking water for personal and domestic uses

Each member of a community should receive safe, clean drinking water. Governments should oversee the safe and sustainable operation of drinking water treatment and distribution systems. Drinking water treatment facilities treat source waters to meet scientifically set drinking water standards. These treated waters are then distributed to homes to fulfill domestic needs.

Costs incurred for operating these drinking water treatment facilities are generated by users and supplemented with state and federal funding. However, if adequately calculated, our municipal water rates and tariffs should recuperate almost 100% of the costs incurred for treating and distributing drinking water. Governments can spur innovation in drinking water treatment and distribution by investing in new technologies and exploring new practices that reduce costs and increase efficiencies, thereby reducing the cost of maintenance and operation.

To ensure adequate access to sanitation

Untreated wastewater poses a significant threat to our waterways. Therefore, governments are responsible for overseeing the effective operation of wastewater treatment plans. This includes establishing clear discharge standards that prevent the discharge of dangerous chemicals or bacteria and prevent the discharged water from altering the water quality of the discharged to waterway.

Costs incurred for operating these wastewater treatment facilities are shouldered by users and supplemented with state and federal funding. However, if adequately calculated, our municipal sewer rates and tariffs should recuperate almost 100% of the costs incurred for collecting and treating wastewater. Governments can reduce costs and increase efficiencies by exploring the application of technologies and practices that create value from waste. For example, the addition of an anaerobic digester to a wastewater treatment plant can allow a wastewater treatment plant to generate sufficient energy to operate off the grid as well as reduce the volume of solid waste remaining at the end of the treatment process, thereby reducing the cost of maintenance and operation.

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4 http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf

ABA YLD EER, Human Right to Water Recommendation
14 December 2016
To be effective stewards of water used for drinking water

Governments are responsible for monitoring water quality of all waterways used as source for drinking water. This responsibility requires the setting of water quality standards, the establishment of registration and reporting requirements for all parties discharging into these designated waterways, and the enforcement of set water quality standards. The minimum requirements protect the water quality of waterways used as source waters for drinking water treatment facilities and require accountability on the part of water users.

ABA: HUMAN RIGHT TO WATER

The ABA is a champion for reforms that promote the public interest and should adopt a policy recognizing that every human being has the fundamental right to safe, clean, affordable water.\(^5\)

The ABA has adopted resolutions recommending that local, state, and federal governments adopt legislation to further a policy goal. For example, in 2015, the ABA adopted Resolution 105, which urged “legislative bodies and governmental agencies to enact comprehensive laws that prohibit, unless otherwise exempted, the possession, sale, breeding, import, or transfer of dangerous wild animals, in order to protect public safety and health, and to ensure the humane treatment and welfare of such animals.”\(^6\) And in 2013, the ABA adopted Resolution 100 which urges “legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous dog laws based on behavior and to repeal any breed discriminatory or breed specific provisions.”\(^7\)

Related resolutions have focused on wetlands, climate change, and marine resources. Revised Report 101 urges “federal, state, territorial and tribal governments, when considering and approving legislation, regulations and policies, to preserve and enhance the benefits that people derive from ecosystems, with due regard for economic, human and social impacts.”\(^8\) Revised Report 109 urges “the United States government to take a leadership role in addressing the issue of climate change through legal, policy, financial and educational mechanisms and to engage in active international discussions to address climate change, and urging Congress to enact and the President to sign appropriate climate change legislation.”\(^9\) Revised Report 101A encourages “Congress and the President to take specific legislative, regulatory and other actions necessary to improve the structure of our country’s domestic management and regulation of its marine resources in order to better protect the integrity of its marine ecosystems and to ensure ecologically sustainable use and development of its marine resources.”\(^10\)

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\(^{5}\) http://www.americanbar.org/advocacy.html
\(^{6}\) Memorandum for the 2015 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates (Mar. 10, 2015).
\(^{7}\) Memorandum for the 2012 Annual Meeting of the American Bar Association and Meeting of the House of Delegates (Aug. 29, 2012).
\(^{8}\) Memorandum for the 2008 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates (Feb. 29, 2008).
\(^{9}\) Id.
\(^{10}\) Memorandum for the 2005 Annual Meeting of the American Bar Association and Meeting of the House of Delegates (Sept. 23, 2005).
The ABA itself has a commitment, reaffirmed in Resolution 105, “to sustainable development and defines sustainable development as the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations.”

A key aspect of sustainable development is the guarantee of safe, clean, and affordable drinking water.

By adopting this policy, the ABA will motivate governments to prioritize water and facilitate innovation in water technology and practice.

CONCLUSION

Water has yet to be elevated as a national or international priority. Yet, access to drinking water and sanitation are essential to the growth of our economy, the protection of our national security, and the achievement of the Sustainable Development Goals worldwide. The ABA should adopt a policy recognizing the right to safe, clean, affordable water and encourage federal, state, and local governments to also recognize the right to safe, clean, affordable water.

Respectfully submitted,
Alexandra Campbell-Ferrari
Co-Chair, ABA YLD Environment, Energy and Resources Committee
February 2017

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ABA-YLD RECOMMENDATION
GENERAL INFORMATION FORM

Submitting Entity: ABA-YLD Environment, Energy and Resources Committee
Submitted by: Alexandra Campbell-Ferrari, Co-Chair
Christina Reichert, Co-Chair
ABA-YLD Environment, Energy and Resources Committee

1. Summary of Recommendations

The ABA-YLD-EER Committee asks that the ABA adopt a policy recognizing that every human being has the fundamental right to safe, clean, affordable water. The Committee also recommends that the ABA urge all federal, state, territorial, and local legislative bodies to adopt laws and policies recognizing the human right to safe, clean, affordable water.

2. Date of Approval by Submitting Entity

To be considered by the ABA-YLD Assembly on Saturday, February 6, 2017.

3. Has this or a similar recommendation been submitted to the Assembly or ABA previously?

Not to the submitters’ knowledge.

4. Are there any Division or ABA policies that are relevant to this recommendation and, if so, would they be affected by its adoption?

Not to the submitters’ knowledge.

5. Does this recommendation require immediate action at the next Assembly? If so, why?

The extent of lead-contaminated drinking water in Flint and the ongoing challenges in addressing the crisis demonstrate the urgency with which the ABA and state and local governments must prioritize access to safe, clean drinking water and sanitation.

6. Status of Legislation

N/A

7. Cost to the Association

Supporting this recommendation will require minimal resources. To support state and local governments’ efforts to adopt and implement a law recognizing the human right to water, the ABA should provide information on the definition and purpose of a human right to water, create forums in which stakeholders can discuss efforts and collaborate with other stakeholders, and
utilize existing platforms on which to share information. These activities can largely be built on already existing structures. Costs are not expected to exceed $5,000.

8. Disclosure of Conflict of Interest

N/A

9. Referrals

The following list of Committees support the Recommendation.

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<td>Ashley Ludovicy and Shawn Hoover</td>
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<td>Tax Law</td>
<td>Vlad Frants</td>
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<td>Ethics and Professional Responsibility</td>
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<td>Tort, Trial and Insurance Practice</td>
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<td>Health Law</td>
<td>Dani Borel</td>
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<tr>
<td>Civil Rights and Social Justice</td>
<td>Carter Coker Simpson</td>
</tr>
<tr>
<td>Administrative Law</td>
<td>Tyler Scandalios</td>
</tr>
<tr>
<td>Litigation</td>
<td>Lauren Marsicano and Richard Rivera</td>
</tr>
</tbody>
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10. Contact Person prior to meeting

Alexandra Campbell-Ferrari
Co-Chair, ABA-YLD Environment, Energy, Resources Committee
The Center for Water Security and Cooperation
1701 Pennsylvania Ave. NW Ste. 300
Washington, DC 20006
(202) 796-8672
acampbellferrari@ourwatersecurity.org

11. Contact Person who will present the Report at the ABA Midyear Meeting in Miami, FL

Alexandra Campbell-Ferrari
Co-Chair, ABA-YLD Environment, Energy, Resources Committee
The Center for Water Security and Cooperation
1701 Pennsylvania Ave. NW Ste. 300
Washington, DC 20006
(202) 796-8672
Christina Reichert
Co-Chair, ABA-YLD Environment, Energy, Resources Committee
Nicholas Institute for Environmental Policy Solutions, Duke University
2117 Campus Drive, Box 90335
Durham, North Carolina 27708-0335
(919) 613-8745
christina.reichert@duke.edu