Barriers to Access to Safe and Affordable Water for Disadvantaged Communities in California

Submission to the United Nations Universal Periodic Review of

United States of America

Second Cycle
Twenty Second Session of the UPR
Human Rights Council
April - May 2015

Submitted by: Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law

Contact Name: Environmental Justice Coalition for Water
Contact Phone/Email: 916-432-3529/colin@ejcw.org
Organization website: www.ejcw.org

ABOUT THE AUTHORS

Safe Water Alliance

The Safe Water Alliance (SWA) is a coalition of faith-based, environmental justice, tribal, consumer, public health, and human rights advocates that represent communities across California. SWA sponsored Assembly Bill (AB) 685—the "Human Right to Water Bill"–in California, and is working on implementation efforts. The coalition works on other legislative efforts related to accessibility, affordability, and quality of water, especially for disadvantaged communities. SWA members share a vision of universal access to safe and affordable water in California.

Environmental Justice Coalition for Water

The Environmental Justice Coalition for Water (EJCW) is a statewide coalition of grassroots groups and intermediary organizations building a collective, community-based movement for democratic water allocation, management, and policy development in California. EJCW empowers low-income communities and people of color throughout California to advocate for clean, safe, and affordable water for their communities. We envision all communities throughout California having access to safe and affordable water, clean rivers, streams, and bays for personal, cultural, ceremonial, and recreational uses.

International Human Rights Law Clinic, University of California, Berkeley, School of Law

The International Human Rights Law Clinic (IHRLC) designs and implements innovative human rights projects to advance the struggle for justice on behalf of individuals and marginalized communities through advocacy, research, and policy development. The IHRLC employs an interdisciplinary model that leverages the intellectual capital of the university to provide innovative solutions to emerging human rights issues. The IHRLC develops collaborative partnerships with researchers, scholars, and human rights activists worldwide. Students are integral to all phases of the IHRLC's work and acquire unparalleled experience generating knowledge and employing strategies to address the most urgent human rights issues of our day.

I. EXECUTIVE SUMMARY

1. The United States of America has a well-developed legal and regulatory framework governing the quality and provision of water at both the federal and state level. Despite these measures, disadvantaged communities in California, particularly communities of color, disproportionately bear the health and financial impacts of precarious or inadequate access to safe water. Many marginalized communities in the state are exposed to unsafe drinking water, struggle with inadequate infrastructure, face affordability challenges, lack access to meaningful participation in decision-making, and confront threats to their traditional and ceremonial practices.

Rural Communities

2. Many rural communities in agricultural regions are exposed to unsafe levels of contaminants in their water. In California, two primary agricultural regions are experiencing a documented crisis of nitrate contamination in ground water resulting from intensive agricultural practices. Many rural communities in these regions are comprised of a majority Latino population. Given the dependence on ground water in these regions, many residents are continually exposed to nitrates and other contaminants, such as arsenic, which are known to cause serious health impacts.

3. Many of the same communities that are exposed to contaminants rely on water infrastructure that has been neglected for decades and therefore cannot adequately address these contamination issues. As a result, many residents in these regions pay twice for basic water services: once for the contaminated water that flows from their taps and a second time for bottled water that is safe for drinking and cooking. When communities pursue infrastructure improvement projects, they often face complex application processes, which require technical expertise. Even when funding is secured, many small, rural communities often cannot pay the water rates necessary to operate and maintain upgraded water systems and are forced to shut them down and return to the regular use of contaminated water.

Tribal Communities

4. Native American communities also face water contamination and inadequate access to water, which engenders additional impacts on traditional and cultural practices. Some communities face arsenic or other contamination of their drinking water, while others simply lack access to a steady water supply. Other native communities risk losing access to important ceremonial sites through proposed infrastructure projects. Water has a special significance for indigenous groups and barriers to access it not only poses a threat to health and livelihoods, but to the loss of traditional and cultural practices.

Urban Populations

5. Urban communities also face challenges related to water quality and accessibility. Many communities rely on water that is contaminated by industrial waste, resulting in water

that either poses a threat to health or is undrinkable due to its foul smell and discoloration. In many towns and cities, homeless persons lack access to clean water for drinking and basic hygiene, a problem exacerbated by local policies which restrict access to public restrooms and drinking fountains in public areas. Public schools in some impoverished rural and urban areas do not provide access to clean water for students through drinking fountains and instead use limited resources to purchase safe drinking water for children.

Public Participation

6. The convoluted nature of water governance structures in California creates barriers to meaningful public participation. Even when residents can identify the relevant governing body, the related decision-making processes can be inaccessible, especially for people from disadvantaged communities. Language barriers and a lack of interpretation during meetings and in written materials create significant challenges for non-English speaking residents. In addition, important meetings are often held in distant locations and during work hours, hindering participation by workers and low-income residents. Finally, the technical language and knowledge used in relevant discussions serve to exclude the very residents impacted by the policy decisions. Barriers to participation are particularly acute for those tribal communities that are not recognized by the federal government and for unincorporated communities, which lack a municipal government.

Recommendations

7. We call on the federal and state government to pursue the following measures to ensure universal access to safe and affordable water for all Californians:

- Provide follow-up to the Special Rapporteur's 2011 report to the Human Rights Council on her mission to the United States and respond to the recommendations therein.
- Convene a national inter-agency consultation on drinking water with the aim of developing comprehensive and effective responses to water challenges in the country.
- Identify research areas that need to be addressed and prioritize government funding to address the most urgent challenges identified by that research agenda.
- Address water quality and quantity at both the source and point of use to ensure that policies support the health and safety of the natural environment as well as consumers and include measures to mitigate contamination by the agricultural sector and other industries.
- Develop programs and priorities within the national Climate Action Plan framework that address the challenges of accessibility and affordability of marginalized communities, indigenous peoples, low-income urban residents, and vulnerable populations.
- Improve engagement between the government and community members, particularly with disadvantaged communities, to ensure their access to information, meaningful participation, and timely access to funding and emergency assistance.
- Ensure decision-making processes are transparent in their consideration of the benefits and risks of different policies and regulations, particularly on disadvantaged communities and that proposed solutions do not create undue burdens on affected communities.

II. LEGAL FRAMEWORK

8. Over the last decade, the international community has focused its attention on the importance of universal access to clean and affordable water, recognizing the human right to water in a range of documents, including resolutions, declarations, general comments and recommendations, and other standards.[1] The United Nations General Assembly and the Human Rights Council have both recognized the human right to water and sanitation and acknowledged that access clean drinking water and sanitation are essential to the realization of all human rights.[2] With this important right in mind, the Human Rights Council appointed a Special Rapporteur on the human right to safe drinking water and sanitation ("Special Rapporteur") and established a mandate to examine crucial issues relating to the right to water with an "explicit focus on the most disadvantaged and marginalized [communities]."[3]

9. The human right to water falls under broader economic, social, and cultural rights found in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[4] The human right to water derives from three core rights of the ICESCR: the right to an adequate standard of living, the right to health, and the right to housing.[5] The Committee on Economic, Social and Cultural Rights (CESCR), in its general comment on the topic, outlines that states should make water available, accessible, affordable, acceptable and of good quality for *everyone*, and to take necessary steps to ensure access to water.[6] While the United States of American (United States) has not ratified the ICESCR, it supported the recognition of the right to water by the General Assembly and Human Rights Council.[7]

10. In addition, the human right to water is interpreted to fall under the economic, social, and cultural rights enumerated in other treaties including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).[8] Although the United States has not ratified these treaties, by signing them the United States is obligated to "refrain from acts that would defeat the object and purpose of th[o]se treaties."[9]

11. While the United States is not bound by the ICESCR, its legal obligations under the International Covenant for the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR) require it to ensure nondiscrimination.[10] Nondiscrimination is a core principle underlying international human rights and is outlined as an independent right in the ICCPR.[11] The ICERD requires the United States, as a ratifying party, "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law" with respect to, *inter alia*, social, economic, and cultural rights.[12] Both direct and indirect discrimination are prohibited by international law,[13] encompassing express discrimination based on a particular trait as well as the disparate impact and discriminatory effect that a facially neutral law or policy can have.[14]

12. More specifically, ICERD expressly enumerates several economic, social, and cultural rights, such as the right to housing and the right to public health, although the list of rights in the

convention is not all-inclusive. The CESCR has recognized the human right to water by interpreting it to fall under specific rights which mirror those detailed in ICERD, such as an adequate standard of living, health, and housing.[15]

13. More broadly, the UDHR states that every member of society is entitled to the realization of social and cultural rights, as they are indispensable for the dignity and the free development of a person's identity.[16] Native Americans possess broader cultural rights as they pertain to water due to the unique relationship with traditional lands and the natural resources.[17] The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms that indigenous peoples have the right to the lands and resources which they have traditionally owned or used and "the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas."[18]

14. While the United States, governed by the ICCPR and the ICERD, has made efforts to ameliorate discrimination, for many Californians the lack of access to water is still strongly linked to race and membership in disadvantaged communities.[19]

15. The United States' obligation to ensure its citizens the right to participate in decision-making is well established in the ICCPR.[20] Article 25 of the ICCPR provides, "Every citizen shall have the right and the opportunity … to take part in the conduct of public affairs, directly or through freely chosen representatives."[21] This article has been interpreted as "the right of individuals to participate in those processes which constitute the conduct of public affairs."[22] Political participation must also be free from "unreasonable restrictions," which may be considered distinct from discriminatory limitations on participation.[23]

16. Under the ICCPR, the United States must ensure that its citizens are able to take part in public affairs, either directly or through freely chosen representatives.[24] Direct participation includes participating in a legislative body, holding executive office, or deciding public issues through an electoral process.[25] The public also has the right to participate in popular assemblies on local issues or in "bodies established to represent citizens in consultation with government."[26] This may be interpreted as an individual's right to participate in public comment and attend government meetings, to participate through public debate, dialogue with one's representatives, or by organizing with other citizens.[27] The right to indirect political participation involves an individual's exercise of political power through "freely chosen representatives."[28] Accountability is an important component of indirect participation.[29] All economic, social, and cultural rights, including the right to clean water and sanitation, "require guarantees of personal security, freedom of expression and representative government, [which are] ensured by the principles of accountability and participation."[30]

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

17. Contrary to international legal obligations, current water policies in California disparately impact marginalized populations, including, racial and ethnic minorities, the poor, indigenous groups, the elderly, children, and people with disabilities.[31] While most Californians enjoy access to clean water, those who do not are disproportionately low-income people of color. For instance, many agricultural areas, with majority populations consisting of racial and ethnic minorities, face concentrations of nitrates and other harmful pollutants above legal limits.[32] In fact, racial minorities and renters in these small communities are more likely to be exposed to contaminated water, compared to White residents and homeowners.[33] Moreover, twelve to thirteen percent of indigenous people lack access to safe drinking water and/or wastewater disposal compared to less than one percent of non-natives.[34] As discussed below, people of color and disadvantaged communities face inequity regarding their access to safe, affordable water in the state.

Water Quality and Safety

18. Groundwater is "vital" to California.[35] Depending on drought conditions, California relies on groundwater for 33 to 50 percent of its water supply.[36] This rate is even higher in agricultural communities like the San Joaquin and Salinas Valleys, where 97 percent of residents rely on groundwater.[37] Despite the importance of groundwater as a water resource, "[n]itrate is one of California's most widespread groundwater contaminants," which often results from intensive agricultural practices.[38] For instance, water systems serving 57 percent of the population in the San Joaquin and Salinas Valleys have exceeded nitrate standards at least once between 2006 and 2010.[39] And, as noted by the Special Rapporteur, in Tulare County, CA—located in the San Joaquin Valley—40 percent of wells have nitrate levels exceeding the legal limit.[40] In addition to nitrates, low-income agricultural communities are plagued with contaminated water containing arsenic, pesticides, and disinfectant byproducts.[41] These contaminants can have harmful health effects. Infants are at risk of death, and adults can also suffer serious harm linked to nitrate contamination including, cancer, gastroenteritis, impairments to the digestive tract, and nervous system disabilities.[42] Nitrate contamination has also been linked to miscarriage, stillbirth, premature birth, and impaired growth in utero leading to disabilities.[43]

19. Urban communities face similar water quality issues due to the impact of industrial waste. The city of Maywood, CA, located in Los Angeles, County, exemplifies this problem. Maywood is a predominately Latino community with water contaminated by high levels of lead, mercury, manganese, and trace amounts of diethylhexyl phthalate, a severely toxic byproduct of industrial waste.[44] As a result of high levels of manganese, Maywood residents are forced to pay for undrinkable, discolored water that smells and tastes foul.[45] Nevertheless, the government and the water companies have not taken any action to remedy the extremely poor quality of Maywood's drinking water.[46]

20. Native Americans, in particular, face acute challenges in accessing quality water. When barriers such as dams are constructed in tribal regions, tribes are left with the remnants of construction.[47] For example, the Klamath Project causes irrigation diversions, which

threaten infection of salmon smolts by parasites and other disease epidemics due to insufficient water flows.[48] As a result, tribal communities lack access to water and battle with water contaminated with high levels of arsenic or bacteria.[49]

Affordability Challenges for Low-Income Individuals and Communities

21. Poverty and a lack of resources exacerbate communities' lack of access to clean water in two important ways. First, low-income communities can face paying a disproportionate amount of their household income for basic water necessities. For example, in small rural communities like Seville in Tulare County, CA, contaminated groundwater results in dependence on expensive alternative water sources, like bottled water.[50] As a result, some impoverished residents pay upwards of 20 percent of their income for water utility fees, bottled water and related transportation costs, whereas, "[i]n the United States, combined water and sewer bills average only about 0.5 percent of household income."[51] Additionally, traveling to access clean water may more acutely impact the elderly and people with disabilities within these communities.

22. Secondly, many low-income communities cannot afford to install or maintain expensive water treatment infrastructure, or obtain the necessary funding to address water contamination issues.[52] Indigenous tribes that are not federally recognized[53] face problems qualifying for bond funding for infrastructure projects to provide clean water, or to connect to nearby public water systems due to their status as unrecognized tribes.[54] Other tribes find themselves forced to pursue alternative sources, like drilling private wells, which are often expensive and not feasible.[55] The Hopland Tribe, could not afford the cost of treating contaminated surface water, and instead drilled its own wells, which produced water that was contaminated with arsenic, iron, and manganese.[56] As an alternative, the tribe worked to build a water pipeline five miles away to the town of Hopland, but the Hopland Public Utility District refused to connect the tribe's pipeline to the town's water system.[57] Presently, water is instead trucked in from Hopland at a high cost to the tribe.[58] Moreover, even federally recognized tribes face challenges due to the lack of funding dedicated to existing state and federal programs for tribal water systems.[59]

23. The struggles of predominately Latino rural communities illustrate other issues of affordability. In Watsonville, in the Salinas Valley, 21 to 29 percent of residents live below the poverty level, compared to California's overall poverty rate of 15.3 percent.[60] Watsonville is currently considering installing a $26 million treatment system to remove the carcinogen chromium 6 (also known as hexavalent chromium) from its water.[61] The treatment system would also cost $1.7 million in annual operating costs, which would result in a 78 percent increase to consumers' water bills.[62] Lanare, a farmworker community in the San Joaquin Valley, was able to secure $1.3 million in government funding for an arsenic treatment facility. However, the small community could not pay utility rates necessary to cover the operating and maintenance cost of the new facility and it was forced to close down.[63] As a result, residents were left with a $100,000 debt and returned to consuming water containing arsenic at two to three times the legal limit while the treatment facility sits unused.[64]

Barriers to Access to Water for Marginalized Groups

24. In addition to the struggles that poor and rural communities must face in regards to water quality and affordability, other vulnerable groups struggle to access water. Specifically the homeless and public school students.

25. Homeless people are dramatically affected by the inaccessibility of water. It is important to note that people of color are disproportionately represented in the homeless population as compared to the demographics of many major cities where they reside.[65] The Special Rapporteur noted a trend in local policy in the state to close public restrooms or restrict the hours that they are open and cap drinking fountains in parks results in limiting the ability of homeless people to access water and sanitation.[66] As a result, homeless people are either left without access to water or are forced to use unsafe sources, such as river water, which can cause diarrhea and other health impacts.[67] This is especially difficult for homeless persons with disabilities because the limited sources of potable water may be located miles away from the encampment where they reside.[68]

26. Limited or no access to clean and safe water in public schools through drinking fountains impacts California students.[69] In some California schools, drinking fountains have been removed, tapped, or their water supply turned off in order to ensure that students do not drink water contaminated with nitrates or other contaminants.[70] Some schools are forced to buy bottled water in order to meet their legal requirements to provide drinking water to students,[71] diverting limited resources from educational programs.

Social and Cultural Rights of Indigenous People

27. Despite well-established recognition under international law, the traditional practices and cultural heritage of indigenous peoples remain affected by environmental changes.[72] It leads to the loss of culturally significant plants and animals through habitat conversion, changed hydrology and water chemistry, and barriers to passage, such as dams.[73]

28. The construction and operation of dams impact the flow and level of water in lakes and rivers and disrupt traditional practices, such as fishing.[74] Dams like the Shasta Dam and the Klamath Dam have forced tribes to change traditions surrounding fishing as current water levels prevent salmon from passing upstream.[75] For instance, the Trinity River Restoration Program was aimed to protect tribes' cultural practices, but legislation has been passed to allow agencies, such as the Central Valley Project's Trinity River Division, to build dams.[76]

29. A proposal to raise the level of the Shasta Dam, which devastated the Winnemem Wintu tribe when it was built in the 1940s, would flood dozens of tribe's sacred sites.[77] The increased water level would provide water to farmers at the cost of the tribe's sacred traditions. The inaccessibility of water for use in religious ceremonies already threatens the cultural rights of tribes.[78] The Winnemem Wintu tribe faces disruptions of cultural practices due to harassment and intrusion by fishermen and boats on traditional sites on Shasta Lake.[79] For example, the puberty ceremony for the young woman who will be the

tribe's next leader was postponed due to nearby recreational activities in order to avoid the indignity of holding the ceremony without privacy.[80]

Systemic Barriers to Political Participation

30. The United States is obligated to ensure access to political participation for all of its residents.[81] With regard to the planning and provision of safe drinking water, the United States must ensure that its individual citizens "participate in those processes which constitute the conduct of public affairs."[82] In addition, this political participation must be free from "unreasonable restrictions."[83]

31. Various groups lack the ability to participate in local public affairs, such as water accessibility and safety decisions, solely because of the type of governance structure, or lack thereof, in place in their communities.

32. Unincorporated communities are settlements without any municipal government that are only governed by their respective county. A single municipality may surround an unincorporated community, but the residents of these "island" communities are not considered residents of the surrounding municipality. Given this governance structure, residents of unincorporated communities do not have a political voice in these nearby cities, even when the municipalities may directly manage the public works, zoning, or community policing where they live.[84]

33. While over one million Californians reside in unincorporated areas, 300,000 reside in disadvantaged unincorporated communities in the San Joaquin Valley alone.[85] One of the greatest challenges facing these unincorporated communities in the San Joaquin Valley is invisibility: they are unrecognized "as distinct neighborhoods by the U.S. Census or county planning agencies. As a result, their needs are often unaccounted for, they are not acknowledged in planning processes, and they cannot compete for infrastructure investments on a level playing field." [86] A mapping project focused on the San Joaquin Valley revealed the existence of 525 unincorporated communities, but over 70 percent of these communities were unaccounted for in the 2000 Census, leaving these mainly low-income communities[87] "largely invisible to the larger public and policymakers."[88] For the purposes of this report, unincorporated communities refer to these typically small, under-served, and greatly disadvantaged settlements in California.[89]

34. Missing a level of governance that neighboring municipalities enjoy, many unincorporated communities in the San Joaquin Valley do not have the institutional knowledge or capacity to seek funding and support from their respective, often resource-poor counties.[90] In comparison to the larger municipalities and cities surrounding them, unincorporated communities are often unable to harness the political power necessary to ensure that county resources are allocated to their infrastructure needs, such as the replacement of water treatment systems. In fact, in some instances, the county has tried to "starve out" unincorporated communities by intentionally withholding essential infrastructure services and public support.[91]

35. Many unincorporated communities have some form of governance to facilitate the provision of water services, usually in the form of a special district. Special districts in California are a specialized type of local government formed by a community to normally perform a single function, like providing water services or fire protection.[92] This limited governance system does not always give the residents a political voice because the governing boards for some of these districts are solely elected by the landowners of properties within the special districts.[93] In some irrigation districts, only landowners may vote even if they do not reside in these districts.[94] Most of these districts are located in agricultural areas[95] experiencing nitrate contamination and are primarily made up of low-income, Latino residents who are renters.[96] In some irrigation districts, renters, regardless of the proportion of the population they represent, are unable to vote for the district board that governs their water system. As a result, those most likely to face water contamination issues have no political voice.[97] These same landowners, who may not reside in the district, may not be persuaded to invest resources in the purchase, installation, and upkeep of expensive filtration systems and infrastructure.[98]

Linguistic, Technical and Geographic Barriers to Participation and Access to Information

36. Even where an open governance system exists in which members of a community have access to the political process, there are many barriers to meaningful political participation for many members of marginalized communities.

37. While California has more than 12 million non-English speakers, most public meetings on water policy are advertised and conducted in English, with limited translation or interpretation.[99] In addition, notifications of hearings, water quality reports, and applications for state water funding programs are oftentimes only in English, even when the vast majority of residents are primarily Spanish-speaking.[100] This creates a barrier to participation in decision-making regarding water governance and has a discriminatory impact on large sectors of the communities who may lack an understanding of government proceedings and informational materials.

38. Inaccessibility to relevant bodies within the water governance system is another barrier to political participation. The complex regulatory structure that governs water use in California may also interfere with genuine political participation due to the inaccessible nature of the structure. California has eight state agencies and over one thousand regional and local agencies that monitor and protect groundwater.[101] This regulatory web prevents people from effectively engaging with relevant agencies and obstructs efforts at accountability.

39. Information about hearings, funding applications, water quality reports, and other notices should be made available to the public in multiple, accessible forms. The use of modern technology to digitize documents, advertise meetings, and distribute agendas is important but can also be a barrier for low-income communities that may not have ready access to computers, the Internet, or the software necessary to access such documents.[102] Multiple points of access are necessary to facilitate participation, especially since community

members may not be informed when new public hearing notices, reports, and other documents are posted online.

40. Even when the public can access such materials, they language used may make the content incomprehensible. Overly technical jargon makes information difficult for average community members to understand and prevents their access to relevant information. Such language can also cause frustration for community members who want to participate in decision-making processes regarding water but do not understand the content of reports. This can be especially cumbersome for communities seeking funding and emergency assistance when the applications, instructions, and criteria are not easily comprehensible. Although efforts have been made by some state agencies, such as the California Environmental Protection Agency, to make information more accessible to the general public,[103] more must be done to ensure that every citizen has the opportunity to meaningfully participate in public affairs. Truly accessible information should be in a format that most people can access without specialized equipment or training.

41. Finally, geography is a barrier because public meetings related to important water issues may be held hundreds of miles away at the state capital or in other major cities.[104] Because many hearings take place during business hours, low-income individuals cannot afford to take a day off work and spend limited resources to travel long distances to attend and offer testimony at hearings.[105] This results in many rural residents in particular being the greatest distance from decision-making fora, even though they may be disproportionately burdened with many of the water quality and access issues in California.

IV. CONCLUSION AND RECOMMENDATIONS

The water challenges in California, particularly those facing communities of color, are many and complex. However, the tools and resources necessary to address these challenges are available and poised to be implemented. We call on the federal and state government to pursue the following measures to ensure universal access to safe and affordable water for all Californians:

- Provide follow-up to the Special Rapporteur's 2011 report to the Human Rights Council on her mission to the United States and respond to the recommendations outlined in the report.
- Convene a national inter-agency consultation on drinking water with the aim of developing comprehensive and effective responses to water challenges in the country.
- Identify research areas that need to be addressed, such as the effects of contaminants, conflicts of laws and gaps in policies, and affordability, and prioritize government funding to address the most urgent challenges identified by that research agenda.
- Address water quality and quantity at both the source and point of use to ensure that policies support the health and safety of the natural environment as well as consumers and include measures to mitigate contamination by the agricultural sector and other industries.

- Develop programs and priorities within the national Climate Action Plan framework that address the challenges of accessibility and affordability of marginalized communities, indigenous peoples, low-income urban residents, and vulnerable populations.
- Improve engagement between the government and community members, particularly with disadvantaged communities, to ensure their access to audience-appropriate information, meaningful participation in decision-making, and timely access to funding for infrastructure improvements and emergency assistance along with any needed technical assistance.
- Ensure decision-making processes are transparent in their consideration of the benefits and risks of different policies and regulations, in particular the scale and severity of potentially adverse consequences, including unintended repercussions, particularly on disadvantaged communities and that proposed solutions do not create undue burdens on affected communities and negatively affect their ability to fulfill other basic needs.
- Identify and address gaps in data needed to accurately assess barriers to accessing clean water and affordable water and the potential impacts of policies and projects on marginalized urban, peri-urban, and rural communities.

---

[1] *See* Convention on the Elimination of All Forms of Discrimination Against Women, art. 14, ¶ 2(h), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW] (stipulating that State parties shall ensure to women the right to "enjoy adequate living conditions, particularly in relation to […] water supply"); Convention on the Rights of the Child, art. 24, ¶ 2(c), Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (requiring State parties to combat disease and malnutrition "through the provision of adequate nutritious foods and clean drinking-water."); Geneva Convention Relative to the Treatment of Prisoners of War, arts. 20, 26, 29, 46, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 85, 89, 127, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 54-55, June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), arts. 5, 14, June 8, 1977, 1125 U.N.T.S. 609.

[2] United Nations Department of Economic and Social Affairs (UNDESA), *International Decade for Action 'WATER FOR LIFE' 2005-2015*, *available at* http://www.un.org/waterforlifedecade/human_right_to_water.shtml (last visited Sept. 14, 2014).

[3] United Nations Human Rights Office of the High Commissioner for Human Rights, *Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, *available at* http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx (last visited Sept. 14, 2014).

[4] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, art. 25, ¶ 1 (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Economic, Social and Cultural Rights, arts. 11, 12, Oct. 5, 1977, 999 U.N.T.S. 171 [hereinafter ICESCR].

[5] Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 20013) [hereinafter *General Comment 15*], at ¶3, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en.

[6] *Id.* at ¶ 2.

[7] G.A. Res. 64/292, U.N. Doc. A/Res/64/292 (Aug. 3, 2010); U.N. Human Rights Council Res. 15/9, U.N. Doc. A/HRC/RES/15/9 (Oct. 6, 2010).

[8] CEDAW, *supra* note 1; CRC, *supra* note 1, art. 24; CRPD, *supra* note 1.

[9] Vienna Convention on the Law of Treaties, art. 18, May 23, 1969, 1155 U.N.T.S. 331. The ICESCR was signed by the United States in 1977.

[10] International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e), Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD].
[11] International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]
[12] ICERD, *supra* note 10.
[13] ICESCR, *supra* note 4, art. 2, ¶ 2; ICERD *supra* note 10, art. 5.
[14] Henrard, K., *Equality of Individuals*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (Sept. 10, 2012) *available at* http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e788?rskey=z1Ly8z&result=1&prd=EPIL (last visited Sept. 15, 2014)*; see also*, ICERD, *supra* note 10, art. 1, ¶ 1.
[15] *General Comment 15*, *supra* note 5.
[16] UDHR, art. 22.
[17] *See* United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007) [hereinafter UNDRIP].
[18] *Id., art. 25.*
[19] *See* Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Mission to the United States of America*, ¶ 7, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), *available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf* (*by* Catarina de Albuquerque) (last visited Sept. 15, 2014) [hereinafter UN Report].
[20] ICCPR, *supra* note 11, art. 25.
[21] *Id.*
[22] Human Rights Committee, Gen. Comm. 25, ¶ 2, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996) [hereinafter *General Comment 25*].
[23] *Id.* at ¶ 6.
[24] ICCPR, *supra* note 11, art. 25.
[25] *General Comment 25*, *supra* note 22, at ¶ 6.
[26] *Id.*
[27] *Id.* at ¶ 8.
[28] *Id.* at ¶ 7.
[29] *Id.* ("[I]t is implicit in Article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power.").
[30] CATARINA DE ALBUQUERQUE, Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, ON THE RIGHT TRACK: GOOD PRACTICES IN REALISING THE RIGHTS TO WATER AND SANITATION 27-28 (2012), *available at* http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/GoodPractices.aspx.
[31] *See* Carolina Balazs et al., "*Just Water? Social Disparities in Nitrate Contaminated Drinking Water in California's Central Valley*," 119(9) ENVTL. HEALTH PERSP. 1272-78 (2011) [hereinafter Balazs et al.]; UN Report, *supra* note 19, at ¶ 79.
[32] UN Report, *supra* note 19, at ¶ 67.
[33] Balazs et al., *supra* note 31.
[34] UN Report, *supra* note 19, at ¶ 63; ENVIRONMENTAL PROTECTION AGENCY, *American Indian Environmental Office Tribal Portal, Infrastructure Task Force to Improve Access to Safe Drinking Water and Basic Sanitation in Indian Country*, (last updated Sept. 4, 2014), http://www.epa.gov/tribalportal/trprograms/infra-water.htm.
[35] CENTER FOR WATERSHED SCIENCES, UNIVERSITY OF CALIFORNIA, DAVIS, ADDRESSING NITRATE IN CALIFORNIA'S DRINKING WATER: WITH A FOCUS ON TULARE LAKE BASIN AND SALINAS VALLEY GROUNDWATER 9 (2012), [hereinafter UC DAVIS NITRATE REPORT], *available at* http://groundwaternitrate.ucdavis.edu/files/138956.pdf.
[36] *Id.;* NATIONAL DROUGHT MITIGATION CENTER, *U.S. Drought Monitor-California: Sept.. 9, 2014*, http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA (last visited Sept. 15, 2014); *see also* ASSEMBLY CALIFORNIA LEGISLATURE, *Joint Oversight Hearing-Environmental Safety and Toxic Materials and Health Committees: Impact of the Drought on Vulnerable Communities' Access to Drinking Water, The California Channel* (Feb. 18, 2014), *available at* http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=1821; UN Report, *supra* note 19, at ¶ 26.
[37] *Id.* at 47.
[38] UC DAVIS NITRATE REPORT, *supra* note 35, at 2, 11; UN Report, *supra* note 19, at ¶¶ 34-36.
[39] UC DAVIS NITRATE REPORT, *supra* note 35, at 50.

[40] UN Report, *supra* note 19, at ¶ 37 (citing County of Tulare, "Agenda Item: Modification of the membership of the Tulare County Water Commission and the authorization of submission of a Proposition 84 grant application," 17 July 2007.).
[41] UN Report, *supra* note 19, at ¶ 38.
[42] UC DAVIS NITRATE REPORT, *supra* note 35, at 9.
[43] *Id.*
[44] U.S. CENSUS BUREAU, *Total Population by Race (Hispanic exclusive) and Hispanic or Latino: 2010*, http://www.dof.ca.gov/research/demographic/state_census_data_center/census_2010/#DP (last visited Sept. 15, 2014) [hereinafter *US Census Bureau 2010 Data*]; LAUREL FIRESTONE, GUIDE TO COMMUNITY WATER ADVOCACY 31 (2009), *available at* http://www.communitywatercenter.org/cwc_community_guide [hereinafter CWC GUIDE].
[45] CWC GUIDE, *supra* note 44, at 31.
[46] *Id.*
[47] CAL. DEP'T OF WATER RES., *2009 California Tribal Water Summit Proceedings: Protect Our Sacred Water*, 3 (2009), *available at* http://www.waterplan.water.ca.gov/docs/tws/CTWS_ProceedingsFull_v2df_02-08-10.pdf (last visited Sept. 14, 2014) [hereinafter PROTECT OUR SACRED WATER].
[48] CALIFORNIA WATER PLANNING TEAM, TRIBAL WATER STORIES 47 (Kym Trippsmith, ed., 2010), *available at* http://www.waterplan.water.ca.gov/docs/tws/TribalWaterStories_FullBooklet_07-13-10.pdf (last visited Sept. 14, 2014) [hereinafter TRIBAL WATER STORIES].
[49] *Id.* at 8.
[50] UN Report, *supra* note 19, at ¶ 39.
[51] In addition, the Special Rapporteur, notes that the United States Environmental Protection Agency suggests that a ceiling of two percent of a household's income should be allotted to water costs while the World Bank suggests an allotment of three to five percent. UN Report, *supra* note 19, at ¶¶ 39, 48, n.31; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, WATER ON TAP: WHAT YOU NEED TO KNOW, 9 (2009), *available at* http://water.epa.gov/drink/guide/upload/book_waterontap_full.pdf.
[52] Balazs et al., *supra* note 31.
[53] There are over 300,000 Native Americans who belong to federally unrecognized tribes in California alone. UN Report, *supra* note 19, at ¶ 61.
[54] UN Report, *supra* note 19, at ¶¶ 67-68.
[55] UN Report, *supra* note 19, at ¶ 68.
[56] TRIBAL WATER STORIES, *supra* note 48, at 8.
[57] *Id.* at 44.
[58] *Id.* at 8.
[59] PROTECT OUR SACRED WATER, *supra* note 47, at 13-17; UN Report, *supra* note 19, at ¶ 64.
[60] *State & County QuickFacts: Watsonville, California*, UNITED STATES CENSUS BUREAU, *available at* http://quickfacts.census.gov/qfd/states/06/0683668.html (last visited Sept. 14, 2014); *Watsonville, California Poverty Rate Data: Information about poor and low income residents*, CITY-DATA.COM, *available at* http://www.city-data.com/poverty/poverty-Watsonville-California.html (last visited Sept. 14, 2014).
[61] Donna Jones, *Watsonville officials pen cost of proposed drinking water rule in the millions*, SANTA CRUZ SENTINEL, Feb. 10, 2014, *available at* http://www.santacruzsentinel.com/watsonville/ci_25108786/watsonville-officials-peg-cost-proposed-drinking-water-rule (last visited Sept. 14, 2014).
[62] *Id.*
[63] California Rural Legal Assistance, *American Recovery and Reinvestment Act of 2009: Analysis of Drinking Water and Waste Water Investment in Fresno and Stanislaus Counties* 10 (2011), *available at* http://www.crla.org/sites/all/files/content/uploads/Resources/CRLA_CEI_ARRA_Water Report-2012.pdf (last visited Sept. 14. 2014).
[64] *Id.*; Rose Francis & Laurel Firestone, *Implementing the Human Right to Water in California's Central Valley: Building a Democratic Voice Through Community Engagement in Water Policy Decision Making*, 47 WILLAMETTE L. REV. 495, 515 (2011) [hereinafter IMPLEMENTING THE HUMAN RIGHT TO WATER].
[65] People of color constitute around 45 percent of the homeless population in Sacramento, 60 percent in Los Angeles, and 50 percent in San Francisco. Megan Kurteff Schatz & Emily Halcon, SACRAMENTO HOMELESS COUNT 2013: COUNT AND SURVEY REPORT 35-36 (July 2013), *available at* http://www.shra.org/Portals/0/pdf/Redevelopment_CommunityRevitalization/CDBG/ActionPlans/2013HomelessPoint-in-TimeCount.pdf (last visited Sept. 14, 2014); LOS ANGELES HOMELESS SERVICES AUTHORITY, 2013 GREATER LOS ANGELES HOMELESS COUNT: OVERALL RESULTS FOR LOS ANGELES COUNTY AND LOS ANGELES CONTINUUM

OF CARE 38 (2013), *available at* http://documents.lahsa.org/planning/homelesscount/2013/HC13-Results-LACounty-COC-Nov2013.pdf (last visited Sept. 14, 2014); APPLIED SURVEY RESEARCH, 2013 SAN FRANCISCO POINT-IN-TIME HOMELESS COUNT & SURVEY: COMPREHENSIVE REPORT 15 (2013), *available at* http://www.sfgov3.org/modules/ showdocument.aspx?documentid=4819 (last visited Sept. 14, 2014).

[66] UN Report, *supra* note 19, at ¶¶ 56, 94(i).

[67] Letter from Catarina de Albuquerque, U.N. Special Rapporteur on the human right to safe drinking water and sanitation, to Sacramento Mayor Kevin Johnson 2 (Jan. 23, 2012), *available at* http://www.scribd.com/doc/80310395/Letter-to-Mayor-Johnson-from-UN (last visited Sept. 14, 2014).

[68] *Id.*

[69] Bernice Yeung, *Survey: Drinking water compliance eludes some California schools*, CALIFORNIA WATCH (Oct. 23, 2012), *available at* http://californiawatch.org/dailyreport/survey-drinking-water-compliance-eludes-some-california-schools-18516 (last visited Sept. 14, 2014).

[70] *Id.*

[71] *See* COMMUNITY WATER CENTER, WATER AND HEALTH IN THE VALLEY: NITRATE CONTAMINATION OF DRINKING WATER AND THE HEALTH OF SAN JOAQUIN VALLEY RESIDENTS 11 (2011), *available at* http://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/58/attachments/original/1394396864/CWC_Water-and-Health-in-the-Valley-Nitrate.pdf?1394396864 (last visited Sept. 13, 2014) [hereinafter WATER AND HEALTH IN THE VALLEY].

[72] PROTECT OUR SACRED WATER, *supra* note 47, at 3.

[73] TRIBAL WATER STORIES, *supra* note 48, at 67.

[74] PROTECT OUR SACRED WATER, *supra* note 47, at 3.

[75] *Id.* at 26.

[76] Eric E. Stene, *Trinity Division: Central Valley Project* 3-4 (1996), *available at* http://www.usbr.gov/projects/ImageServer?imgName=Doc_1303395907001.pdf (last visited Sept. 14, 2014).

[77] Dean Murphy, *At War Against Dam, Tribe Turns to Old Ways*, N.Y. TIMES, Sept. 14, 2004, *available at* http://www.nytimes.com/2004/09/14/national/14tribe.html?_r=0 (last visited Sept. 13, 2014).

[78] UN Report, *supra* note 19, at ¶ 68.

[79] Marc Dadigan, *Winnemem Wintu Tribe Struggles to Protect Sacred Sites*, HUFFINGTON POST, July 17, 2012, *available at* http://www.huffingtonpost.com/2012/07/17/winnemem-wintu_n_1681397.html (last visited Sept. 13, 2014).

[80] *Id.*

[81] ICCPR, *supra* note 11, art. 25.

[82] *General Comment 25*, *supra* note 22, at ¶ 2.

[83] *Id.* at ¶ 6.

[84] INT'L HUMAN RIGHTS LAW CLINIC, UNIV. OF CAL. BERKELEY, HUMAN RIGHTS AT HOME: THE RIGHTS TO HOUSING, WATER, AND POLITICAL PARTICIPATION IN SAN JOAQUIN VALLEY UNINCORPORATED COMMUNITIES 14 (2007), *available at* https://www.law.berkeley.edu/files/IHRLC/HumanRightsatHomeNovember2007FINALVERSION.pdf (last visited Sept. 14, 2014).

[85] 65 percent of the disadvantaged unincorporated communities in the San Joaquin Valley consist of people of color. POLICY LINK, CALIFORNIA UNINCORPORATED: MAPPING DISADVANTAGED COMMUNITIES IN THE SAN JOAQUIN VALLEY 19, 30 (2013), *available at* http://www.policylink.org/sites/default/files/CA_UNINCORPORATED_2.PDF (last visited Sept. 14, 2014) [hereinafter CALIFORNIA UNINCORPORATED].

[86] POLICY LINK and CALIFORNIA RURAL LEGAL ASSISTANCE, COMMUNITY EQUITY INITIATIVE: A COLLABORATIVE FOR CHANGE 3 (2011), *available at* http://www.racialequitytools.org/resourcefiles/CEI_FINALpolicylink.pdf (last visited Sept. 14, 2014).

[87] 64 percent of the disadvantaged unincorporated community households in San Joaquin Valley are low income. CALIFORNIA UNINCORPORATED, *supra* note 85, at 30.

[88] Throughout California, there are nearly 2.8 million residents living in other unincorporated areas who continue to be unrecognized by the U.S. Census because their respective counties do not submit their communities' names to the U.S. Census Bureau. *Id*. at 9, 24, 30.

[89] Wealthier unincorporated communities are not addressed in this report.

[90] Because unincorporated communities have no municipal government, they must rely on the usually resource-poor county in which they sit for governance, services, and infrastructure. For incorporated cities, the duties of a local government are usually divided between the county and the city. Generally, the county administers services such as recordkeeping and the assessment of property values, while the city government is usually responsible for providing

services such as water provision, sewage systems, and general infrastructure. DAVID J. MCCARTHY & LAURIE REYNOLDS, LOCAL GOVERNMENT IN A NUTSHELL (2007).
[91] Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 CALIF. L. REV. 223, 232 (2012) (citing TULARE CNTY. PLANNING DEP'T, TULARE COUNTY GENERAL PLAN (1971)).
[92] California Special Districts Association, *Special Districts* (2014), *available at* www.csda.net/special-districts (last visited Sept. 14, 2014).
[93] CWC GUIDE, *supra* note 44, at 108. Other governing boards are appointed by state government officials, such as the county board of supervisors. It has previously been estimated that about 400 independent special district boards in California (about 19 percent of the total statewide) are appointed rather than directly elected. Letter from Legislative Analyst Mac Taylor to Honorable Roger Dickinson 12, 19 (Oct. 21, 2011), *available at* http://www.lao.ca.gov/reports/2012/stadm/letters/dickinson_102111.pdf (last visited Sept. 14, 2014).
[94] *See id.*
[95] *See id.*
[96] WATER AND HEALTH IN THE VALLEY, *supra* note 71, at 1; THE ENVIRONMENTAL JUSTICE COALITION FOR WATER, THIRSTY FOR JUSTICE: A PEOPLE'S BLUEPRINT FOR CALIFORNIA WATER 47 (June 2005), *available at* http://www.ejcw.org/ThirstyforJustice.pdf (last visited Sept. 14, 2014) [hereinafter THIRSTY].
[97] *See* THIRSTY *supra* 96, at 26-7; Balazs et al., *supra* note 31.
[98] THIRSTY, *supra* note 96, at 47.
[99] *Id*. at 63.
[100] PACIFIC INSTITUTE, HUMAN COSTS OF NITRATE-CONTAMINATED DRINKING WATER IN THE SAN JOAQUIN VALLEY 24 (March 2011), *available at* http://www.pacinst.org/wp-content/uploads/sites/21/2013/02/nitrate_ contamination3.pdf (last visited Sept. 14, 2014); THIRSTY, *supra* note 96, at 54-55.
[101] THIRSTY, *supra* note 96, at 48.
[102] *Id.* at 63.
[103] *See, e.g.*, California Environmental Protection Agency, Environmental Justice Program Update, February 2014, 67-68, *available at* http://www.calepa.ca.gov/Publications/Reports/2014/EJUpdateRpt.pdf (last visited Sept. 14, 2014).
[104] IMPLEMENTING THE HUMAN RIGHT TO WATER, *supra* note 64, at 532.
[105] *See id*.; THIRSTY, *supra* note 96, at 67.