

Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California

**A Report Submitted to the
Committee on the Elimination of Racial Discrimination
in its 85th Session**

**United States' Compliance with the International Convention
on the Elimination of All Forms of Racial Discrimination**

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Prepared and submitted by:

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

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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 state wide 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. For more information, please visit www.humanrightsclinic.org.

I. EXECUTIVE SUMMARY

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 of color in California disproportionately bear the health and financial impacts of precarious or inadequate access to safe water. Many communities of color in the state are exposed to unsafe drinking water, struggle with inadequate infrastructure, face affordability challenges, and confront threats to their traditional and ceremonial practices.

Rural Communities: Rural communities in agricultural regions are often exposed to contaminants resulting from intensive agricultural practices. In California, two primary agricultural regions are experiencing a documented crisis of nitrate contamination in ground water resulting from intensive agricultural practices. 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.

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: 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. Lack of access to water has a special significance for indigenous groups as it not only poses a threat to health and livelihoods, but to the loss of traditional and cultural practices central to community identity.

Urban Populations: 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 policies which restrict access to public restrooms and drinking fountains in public areas. Public schools in some impoverished areas do not have access to clean water for students through drinking fountains and instead use limited resources to purchase safe drinking water for children.

Given the serious challenges to accessing clean and affordable water for many communities of color in California, we call on the authorities at the federal and state level to ensure access to clean water for all residents of the state by:

- Addressing water contamination at both the source and point of use to provide for long-term and immediate solutions.
- Engaging with community members in a meaningful way to identify water challenges and develop solutions.
- Ensuring a transparent decision-making processes which considers impacts on disadvantaged communities when making decisions about water policy and projects.
- Facilitating access to assistance programs and relevant information about water services and quality by disadvantaged communities.
- Ensuring that accessing clean drinking water does not create undue burdens on community members or impede their ability to fulfill other basic needs.

II. ICERD FRAMEWORK

The International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) seeks to fulfill the United Nations’ purpose of “promot[ing] and encourag[ing] universal respect for and observance of human rights and fundamental freedoms for all” without distinguishing on the basis of race, color, or national origin.¹ The Convention urges State Parties to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... [e]conomic, social and cultural rights”.² Article 1(1) of ICERD defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life”.³ Article 2 of ICERD calls upon states parties to “undertake to pursue by all appropriate means and without delay” a policy to eliminate racial discrimination.⁴

The United States has made progress toward eliminating racial discrimination, but the lack of access to clean drinking water is still strongly linked to race for many communities in California. This shadow report highlights the failure of the U.S. in its obligations under ICERD to realize the human right to water for many communities of color in the state. The report examines the experience of impacted agricultural regions, Native American tribal areas, and urban centers in California, focusing on the challenges affected communities face in accessing clean and affordable water and the political barriers that prevent meaningful dialogue with government actors to address these problems.

The U.S. ratified ICERD in 1994⁵ and is required to periodically submit reports to the Committee on the Elimination of Racial Discrimination (“CERD Committee”).⁶ This shadow report is submitted in response to the Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination (“US CERD Report”) submitted in June 2013.⁷

¹ International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter ICERD].

² *Id.* at Art. 5(e).

³ *Id.* at Art. 1(1).

⁴ *Id.* at Art. 2(1).

⁵ 140 CONG. REC. 14,326 (1994).

⁶ ICERD, *supra* note 1, at art. 9(1).

⁷ Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination concerning the International Convention on the Elimination of All Forms of Racial Discrimination (June 12, 2013), <http://www.state.gov/documents/organization/210817.pdf> [hereinafter Periodic Report].

a. Nexus of Race and Economic, Social and Cultural Rights

Economic, social and cultural human rights are guaranteed through a number of instruments, primarily the Universal Declaration of Human Rights (“UDHR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Economic, social and cultural rights include the right to an adequate standard of living, the right to health, and the right to housing, among others.⁸

Article 5(e) of ICERD explicitly recognizes the right to enjoy “[e]conomic, social and cultural rights” without distinction on the basis of race, color, or national origin. Within this category of human rights, ICERD particularly identifies the right to housing and the right to public health,⁹ although the list provided in the convention is not exhaustive.¹⁰

The U.S. has recognized the importance of non-discrimination in all areas, including economic, social and cultural rights. In the recent US CERD Report, the government specifically highlighted its commitment to eliminating discrimination in housing,¹¹ promoting non-discrimination regarding public health, medical care, and social services,¹² and “making environmental justice a central part of the everyday decision-making process”.¹³

b. Right to Water

The human right to water falls within the body of economic, social, and cultural rights. While its content has been drawn from various rights within this category, the Committee on Economic, Social and Cultural Rights (“CESCR”) has stated that the right to water “clearly falls within the category of guarantees essential for securing an adequate standard of living”.¹⁴ It has also linked the right to water to the rights to health, adequate

⁸ Economic, social and cultural rights are recognized in a number of multilateral and regional human rights instruments. *See* International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990); Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003); Convention on the Rights of Persons with Disabilities, *published* Jan. 27, 2007, A/RES/61/106; African Charter on Human and Peoples’ Rights, *opened for signature* June 27, 1981, CAB.LEG/67/3 rev. 5, 21 I.L.M. 58 (entered into force Oct. 21, 1986); European Social Charter, *opened for signature* May 3, 1996, E.T.S. 163 (entered into force July 1, 1999); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), *published* Nov. 16, 1999, A-52.

⁹ ICERD, *supra* note 1, at arts. 5(iii)-(iv).

¹⁰ Comm. on the Elimination of Racial Discrimination [hereinafter CERD], *General Recommendation 20, The guarantee of human rights free from racial discrimination*, ¶ 1, 48th Sess., 1996, U.N. Doc. A/51/18, annex VIII at 124 (March 8, 1996).

¹¹ Periodic Report, *supra* note 7, ¶ 124.

¹² *Id.* ¶ 133.

¹³ *Id.* ¶ 144.

¹⁴ Comm. 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)*, ¶

housing, and adequate food, as well as more generally to the right to life and human dignity.¹⁵

Encompassed within the human right to water are standards of affordability, availability, accessibility, quality, and acceptability,¹⁶ each of which must be met in order to fulfill enjoyment of the right. Water must be of good quality: safe, “free from micro-organisms, chemical substances, and radiological hazards that constitute a threat to a person’s health”.¹⁷ It should be “of an acceptable color, odor and taste for each personal or domestic use”¹⁸ and available in a quantity sufficient to ensure that basic human needs are met.¹⁹ Beyond the basic need for water to preserve life, the right to an adequate standard of living and health requires water to be available in sufficient quantities for purposes of personal hygiene, cooking and food preparation, and cleaning activities.

Water must also be affordable for all and its cost must not compromise the realization of other human rights.²⁰ This means that “[t]he direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other ... rights”.²¹ International standards indicate that the cost of water should not amount to more than between 3 and 5 percent of household income.²² Finally, water must be physically and continuously accessible, through adequate facilities and services,²³ to households, educational institutions, and workplaces.²⁴ It must be

3, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 20013), *available at* <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPIF1vIPMJGPrCK5aXxG4bAqt2RQ8OBgsAGw8XJOuajoG9jmUjYRQ5MFTYfmhvQ3AV3OHC0EpYsH2tVRbnt70368ltdOVYd> [hereinafter *General Comment No. 15*].

¹⁵ *Id.* ¶ 3.

¹⁶ *Id.* ¶ 12(c)(ii).

¹⁷ *Id.* ¶ 12(b).

¹⁸ *Id.*

¹⁹ GUY HOWARD & JAMIE BARTRAM, DOMESTIC WATER QUANTITY, SERVICE LEVEL AND HEALTH (2003). More water will be needed by individuals in specific circumstances, such as women who are pregnant or lactating. *Id.*

²⁰ *General Comment No. 15, supra* note 14, ¶ 12(c)(ii).

²¹ *Id.* ¶ 12(c)(ii).

²² The United Nations Development Programme has adopted 3 percent as an appropriate benchmark. U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2006 - BEYOND SCARCITY: POWER, POVERTY AND THE GLOBAL WATER CRISIS 97 (2006), *available at* <http://www.undp.org/content/dam/undp/library/corporate/HDR/2006%20Global%20HDR/HDR-2006-Beyond%20scarcity-Power-poverty-and-the-global-water-crisis.pdf>. Meanwhile, the World Water Council has advocated for a 5 percent benchmark. JAMES WINPENNY, REPORT OF THE WORLD PANEL ON FINANCING WATER INFRASTRUCTURE: FINANCING WATER FOR ALL, 19 (2003), *available at* <http://www.oecd.org/greengrowth/21556665.pdf>. See Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Mission to the United States of America*, ¶¶ 48–49, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011) [hereinafter UN Report] *available at* http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf (by Catarina de Albuquerque). EPA guidelines suggest that at most 2.5 percent of household income should be spent on water services. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Small Drinking Water Systems Variances – Public Water Systems: Background*, <http://water.epa.gov/infrastructure/drinkingwater/pws/affordability.cfm> (last visited Apr. 25, 2014).

²³ *General Comment No. 15, supra* note 14, ¶ 12(c)(i).

²⁴ *Id.*

continuously accessible to fully meet personal and domestic needs.²⁵ Lack of access to water threatens human stability in many ways, such as by threatening reasonable expectations of surviving and thriving and by undermining health and development.²⁶

c. ICERD and the Human Right to Water

The CERD Committee has recognized the human right to water in a number of its past Concluding Observations. The CERD Committee linked the right to water to the right to an adequate standard of living when it expressed concern about the Dominican Republic's practices of limiting Haitian migrants' access to basic social services. It called upon the State to take measures to ensure the right of non-citizens to an adequate standard of living, "in particular, their access to ... drinking water."²⁷

The CERD Committee has also recognized the right to water as an element of the right to housing. The Committee recently stated that a part of the right to adequate housing for the Roma community in Slovakia includes access to drinking water.²⁸ It has also urged Israel to guarantee the right to access natural resources to all populations, specifically referring to water.²⁹

Finally, the CERD Committee has connected the right to water with the right to health. It noted concern with the "critical health situation" of Roma communities in Slovakia, which it found to be "a consequence of their poor living conditions."³⁰ To remedy this, it recommended that Slovakia implement programs and projects in the field of health, including those providing adequate drinking water supplies to the Roma communities.³¹ Additionally, the Committee found that health services in Malawi failed to meet the population's needs, in part because less than half of the population could access drinking water.³²

The barriers to access to clean and affordable water facing some communities of color in California, outlined below, run contrary to the recognition of equal access to water made by this Committee.

²⁵ *Id.* ¶ 12(a).

²⁶ See Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 CALIF. L. REV. 223, 235 (2012) [hereinafter *Drinking Water and Exclusion*].

²⁷ CERD, *Consideration of reports submitted by States parties under article 9 of the Convention - Concluding observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, U.N. Doc. CERD/C/DOM/CO/12, ¶ 18 (May 16, 2008).

²⁸ CERD, *Concluding observations on the ninth to the tenth periodic reports of Slovakia, adopted by the Committee at its eighty-second session (11 February-1 March 2013)*, U.N. Doc. CERD/C/SVK/CO/9-10, ¶ 12(a) (Apr. 17, 2013).

²⁹ CERD, *Consideration of reports submitted by States parties under article 9 of the Convention - Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, U.N. Doc. CERD/C/ISR/CO/14-16, ¶ 25 (March 9, 2012).

³⁰ CERD, *Consideration of reports submitted by States parties under article 9 of the Convention - Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovakia*, U.N. Doc. CERD/C/65/CO/7, ¶ 11 (Dec. 10, 2004).

³¹ *Id.*

³² CERD Committee, *Consideration of reports, comments and information submitted by States parties under article 9 of the Convention - Review of the implementation of the Convention in States parties whose reports are seriously overdue: Malawi*, U.N. Doc. CERD/C/SR.1605/Add.1, ¶ 8 (Oct. 22, 2003).

III. DOMESTIC LEGAL FRAMEWORKS

The provision and regulation of water for residents of California is governed by a well-developed legal and regulatory framework at both the state and federal level.

a. Existing Federal Framework

The existing federal framework on the right to water primarily consists of two statutes, the 1972 Clean Water Act and the 1974 Safe Drinking Water Act, neither of which recognizes a right to safe drinking water.³³ Both acts focus specifically on water quality,³⁴ just one of the four elements of the human right to water.³⁵ The Clean Water Act prescribes water quality standards for contaminants in surface waters, but it allows for exceptions.³⁶ The Safe Drinking Water Act sets contaminant levels for drinking water and drinking water sources, making regular testing for contaminants in these sources mandatory.³⁷

The federal framework is regulated by multiple agencies, which establish minimum standards that states must also abide by in their own regulatory regimes.³⁸ The Environmental Protection Agency (“EPA”), for example, regulates pollution and water quality standards.³⁹ However, the majority of water regulations, though modeled on EPA standards, are created and enforced at the state level.⁴⁰

b. Existing Framework in California

A complex network of state agencies regulates different elements of the right to water, such as quality,⁴¹ cost,⁴² and allocation. For example, the State Water Resources Control Board (“State Water Board”) administers water rights and regulates water quality,⁴³ creating a quinquennial California Water Plan that is open to public comment at the draft stage.⁴⁴ While the State Water Board guides the regional water pollution control boards,⁴⁵ many key decisions take place at the regional, rather than state, level. The nine regional

³³ 33 U.S.C. § 1251 (2006) and 42 U.S.C. § 300f (2006) respectively. *See also* UN Report, *supra* note 22, ¶¶ 9–10.

³⁴ UN Report, *supra* note 22, ¶ 8, ¶¶ 12–13.

³⁵ *See General Comment No. 15, supra* note 14, ¶ 12 (elements of the right to water).

³⁶ UN Report, *supra* note 22, ¶ 12.

³⁷ *Id.* ¶ 13.

³⁸ *Id.* ¶¶ 10–11.

³⁹ *Id.* ¶ 11.

⁴⁰ *Id.* ¶ 13.

⁴¹ CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, THE HISTORY OF THE CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (last updated Jan. 24, 2014) [hereinafter THE HISTORY OF CAL EPA] available at <http://www.calepa.ca.gov/About/History01/>. *See also* HARRY D. MILLER & MARVIN B. STARR, MILLER AND STARR CALIFORNIA REAL ESTATE (3rd ed. 2014) (citing CAL. WATER CODE §§ 13240, 13241 (West 2012)).

⁴² Cal. Const. art. XIID, § 6 (West 2012); *see also* Howard Jarvis Taxpayers Ass’n v. City of Roseville, 97 Cal. App. 4th 637, 647–659 (2002) (“In short, the section 6(b) fee or charge must reasonably represent the cost of providing service.”).

⁴³ Clean Water Act (CWA), 33 U.S.C. § 1361 (2006); CAL. WATER CODE § 13001 (West 2012).

⁴⁴ CAL. WATER CODE § 10004(b)(1), (3) (West 2012); CAL. WATER CODE . § 10004.6(a) (West 2012).

⁴⁵ THE HISTORY OF CAL EPA, *supra* note 41.

water boards, located in each of the state’s major watersheds,⁴⁶ are required to establish water quality control plans for the protection of surface and subsurface waters.⁴⁷

The Department of Water Resources manages planning and conservation efforts,⁴⁸ and the California Department of Public Health (“CDPH”) is responsible for enforcing the maximum contaminant levels (“MCLs”) allowed in drinking water under state and federal law.⁴⁹ The California DPH, in particular, is the agency ultimately accountable on all issues of water quality.⁵⁰ Some state funding is also allocated for emergency and urgent water needs through the Safe Drinking Water Emergency Fund,⁵¹ access to which is being expanded to better include the most severely disadvantaged communities.⁵²

In 2012, California became the first US state to recognize the legal right to water when it passed Assembly Bill No. 685 (“AB 685”), which states that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes”.⁵³ AB 685 builds on California’s long legacy of safeguarding various aspects of the human right to water through legislative action.⁵⁴ It imposes a duty on state agencies to consider how their actions will impact the human right to water – its safety, accessibility, and affordability – in each relevant agency decision and activity.⁵⁵

Although U.S. federal and California state regulations do not specify a set amount of water that people are entitled to, there are some basic guidelines for specific populations. California requires that all employers with outdoor places of employment must provide one quart of water per employee per hour for their entire shift and moreover must encourage “[t]he frequent drinking of water” in order to prevent heat illness.⁵⁶ Schoolchildren must also have access to “free, fresh drinking water during meal times”.⁵⁷

⁴⁶ *Id.*

⁴⁷ MILLER & STARR, *supra* note 41.

⁴⁸ *See, e.g.*, Cal. Water Code § 10004(b)(1) (West 2012).

⁴⁹ CAL. HEALTH & SAFETY CODE §116275(b)-(c), §116287 (West 2014).

⁵⁰ *Id.*

⁵¹ *See* CAL. PUB. RES. CODE §75020-23, §75025 (West 2014).

⁵² CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, “Section 75021 Emergency Grant Draft Criteria,” Sept. 13, 2012, p. 1.

⁵³ AB 685, 2011-2012 Leg., Reg. Sess. (Cal. 2012) (codified at CAL. WATER CODE §106.3 (West 2012)). Outside California, Massachusetts and Pennsylvania recognize the human right to water in their own constitutions: Mass. Const., Art. 97; Pa. Const., Art 1, sect. 27.

⁵⁴ *See, e.g.*, Angelica Salcedo, Kimya Saied & Christine Zulow, International Human Rights Law Clinic, The Human Right to Water Bill in California – An Implementation Framework for State Agencies 3-4 (Roxanna Altholz & Allison Davenport eds., 2013).

⁵⁵ Legislative Intent—Assemb. Bill No. 685, ASSEMB. J. 6817 (2011-2012 Reg. Sess.); Cal. Water Code § 106.3(b) (West 2012).

⁵⁶ Title 8 CCR 3395(c) (West, Westlaw through 7/25/14 Register 2014, No. 30).

⁵⁷ SB 1413, 2009-2010 Leg., Reg. Sess., § 38086(a) (Cal. 2010). The exact quantity of water schools are required to provide is not specified in the statute. Moreover, the statute provides a caveat if a school is not able to comply with the requirements due to fiscal constraints or health and safety concerns. *Id.* at § 38086(b).

IV. RURAL COMMUNITIES OF COLOR

Many rural communities of color in California have long faced barriers to access clean, affordable water. These barriers are especially present in the San Joaquin and Salinas Valleys, rural regions with large Latino populations where intensive agricultural practices⁵⁸ have resulted in the contamination of drinking water. Many communities face inadequate infrastructure to address such issues, but improvements to water treatment systems often negatively impact the affordability and thus the accessibility of water.

a. **Background and Context**

The San Joaquin and Salinas Valleys are the rural areas of California most widely affected by contamination.⁵⁹ These two areas contain about forty per cent of California's irrigated cropland and over half of its dairy herd, and include four out of five counties with the largest agricultural production in the entire US.⁶⁰ Intensive agricultural practices have had severe environmental impacts on the quality of groundwater in these areas.⁶¹ The San Joaquin Valley is home to 3.8 million residents and nearly half of its population is comprised of Latino residents.⁶² The San Joaquin Valley is composed of seven counties, three of which, Fresno, Kern, and Tulare Counties, are a focus of this report. The Salinas Valley faces similar issues and is comprised of a Latino majority population in Monterey (56 percent) and San Benito (57 percent) counties.⁶³

Within the San Joaquin Valley, a significant number of minority residents settled in areas located beyond the boundaries of incorporated cities due to a complex set of socio-economic and political forces.⁶⁴ These unincorporated communities have no municipal government and thus must rely on the county in which they sit for governance, services, and infrastructure.⁶⁵ According to US Census data, there are at least 220 unincorporated

⁵⁸ 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://groundwater.nitrate.ucdavis.edu/files/138956.pdf> COMMUNITY WATER CENTER, WATER AND HEALTH IN THE VALLEY: NITRATE CONTAMINATION OF DRINKING WATER AND THE HEALTH OF SAN JOAQUIN VALLEY RESIDENTS 1 (2011) [hereinafter WATER AND HEALTH IN THE VALLEY], available at http://www.communitywatercenter.org/water_and_health_in_the_valley.

⁵⁹ UC DAVIS NITRATE REPORT, *supra* note 58, at 12, 35.

⁶⁰ *Id.* at 12, 27. The Salinas Valley is at 22.1 mg N/L, and the San Joaquin Valley is at 43.3 mg N/L (as nitrate-N, MCL: 10 mg N/L).

⁶¹ *Id.* at 35.

⁶² This category includes American Indian, Alaskan Natives, Native Hawaiian, and Pacific Islanders.

⁶³ *State and County QuickFacts: Monterey County, California*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/06/06053.html> (last visited Apr. 25, 2014); *State and County QuickFacts: San Benito County, California*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/06/06069.html> (last visited Apr. 25, 2014).

⁶⁴ Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1106-08 (2008).

⁶⁵ For an incorporated city, the duties of a local government are usually divided between the county and the city. Generally, the county administers services such as assessment of property values, and recording deeds, births, and deaths, while the city government is usually responsible for providing services such as education, policing, street maintenance, public transportation, sewage systems, and general infrastructure. See DAVID J. MCCARTHY & LAURIE REYNOLDS, LOCAL GOVERNMENT IN A NUTSHELL (2007).

areas or Census Designated Places (“CDPs”)⁶⁶ located in the San Joaquin Valley with an estimated population of at least 544,400,⁶⁷ of which 47.8 percent is Latino.⁶⁸ However, this demographic profile does not apply uniformly across all of these communities; for example, at least 20 CDPs are over 90 percent Latino.⁶⁹

Furthermore, there are nearly 2.8 million people living in unincorporated areas that are not identified as CDPs, leaving these communities “largely invisible to the larger public and policymakers.”⁷⁰ For purposes of this report, all low-income unincorporated communities, including both those identified as CDPs and those not, are referred to as disadvantaged unincorporated communities (“DUCs”).⁷¹ A mapping project in the San Joaquin Valley identified a total 525 such disadvantaged unincorporated communities, 149 of which are on the current list of CDPs.⁷² California’s DUCs are much more diverse than the rest of the state. Around 65 percent of the DUC population in the San Joaquin Valley is composed of people of color, a higher percentage than in the valley’s cities.⁷³ This is true in Fresno, Kern, and Tulare counties, which are most heavily impacted by nitrate contamination in their drinking water.⁷⁴ For example, 82 percent of the residents

⁶⁶ The U.S. Census Bureau defines Census Designated Places (“CDPs”) as “statistical geographic entities representing closely settled unincorporated communities and identified by name. They are the statistical equivalents of incorporated places, with the primary difference being the lack of both a legally-defined boundary and an active, functioning governing structure chartered by the state and administered by elected officials.” Census Designated Place (CDP) Program for the 2010 Census – Final Criteria, 73 Fed. Reg. 8269 (Feb. 13, 2008).

⁶⁷ *Total Population by Race (Hispanic exclusive) and Hispanic or Latino: 2010*, U.S. CENSUS BUREAU, http://www.dof.ca.gov/research/demographic/state_census_data_center/census_2010/view.php#DP (last visited Apr. 25, 2014) [hereinafter *US Census Bureau 2010 Data*]. See also *Achieving Policy Impact, Unincorporated Communities: The Community Equity Initiative*, POLICYLINK, http://www.policylink.org/site/c.lkIXLbMNJrE/b.5160111/k.8DA6/Unincorporated_Communities.htm (last visited Apr. 25, 2014).

⁶⁸ See *US Census Bureau 2010 Data*, supra note 67. These communities are also 43.3 percent White, 3.6 percent Asian, 2.1 percent African-American, 2.1 percent Bi-racial, and less than 2 percent Other. See *id.*

⁶⁹ See *id.*

⁷⁰ POLICYLINK, CALIFORNIA UNINCORPORATED: MAPPING DISADVANTAGED COMMUNITIES IN THE SAN JOAQUIN VALLEY 12-13 (2013) [hereinafter CALIFORNIA UNINCORPORATED], available at http://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf. Counties submit the names of communities they recommend to be recognized as CDPs, which they identify based on a process called Census Participant Statistical Area Program. This program uses factors such as having well-known, closely settled localities; a mix of residential, commercial, and retail areas; having a name; and having a nucleus of relatively high residential population density to identify CDPs. U.S. Census Bureau, *U.S. Census Bureau Participant Statistical Areas* (2010), available at http://www.census.gov/geo/partnerships/pdfs/PSAP_info_sheet.pdf.

⁷¹ CALIFORNIA UNINCORPORATED, supra note 70, at 15-17. DUCs are communities in which “the median household income [is] less than 80 percent of the median household income of the state,” which in this case is \$37,994. This benchmark is also used in state-level infrastructure funding programs, such as the Safe Drinking Water State Revolving Fund, which target low-income communities.

⁷² *Id.* at 18.

⁷³ *Id.* at 18. County by county, most DUCs in the San Joaquin Valley have higher percentages of residents who are people of color than in the corresponding counties or cities. *Id.* at 27-30. These communities also have a greater percentage of low income households, approximately 64 percent, reflecting a higher percentage than towns, cities, and CDPs. *Id.* at 18.

⁷⁴ UC DAVIS NITRATE REPORT, supra note 58, at 27, tbl. 3.

of Tulare County’s DUCs are people of color,⁷⁵ versus 56 percent of the residents of the city of Tulare.⁷⁶

b. Water Challenges

i. Contamination and Water Quality

Groundwater accounts for one-third to one-half of California’s water supply.⁷⁷ Within the San Joaquin and Salinas Valleys, over 97 percent of the population relies at least partially on groundwater.⁷⁸ Despite being an essential resource for so many Californians, groundwater is plagued by nitrate contamination due to intensive agricultural practices.⁷⁹ The use of nitrogen-based fertilizers, manure, and nitrogen-fixing cover crops has concentrated high levels of nitrogen in the soil, and led to the leaching of nitrate into groundwater.⁸⁰ The Special Rapporteur on the human right to safe drinking water and sanitation noted California’s “enormous” problems with nitrate contamination,⁸¹ specifically citing the San Joaquin Valley.⁸² 40 percent of the wells in Tulare County, which is in the San Joaquin Valley, exceeded the nitrate MCL.⁸³

About 254,000 people of the 2.6 million in the San Joaquin and Salinas Valleys are at risk for nitrate contamination of their drinking water.⁸⁴ 57 percent of the population of the San Joaquin and Salinas Valleys is served by water systems in which nitrate standards have been exceeded at least once between 2006 and 2010.⁸⁵

Nitrate contamination gravely affects human health: it can cause serious illness and even death to infants who drink water containing nitrates above the maximum contaminant level.⁸⁶ In adults, nitrate contamination is linked to gastroenteritis and a range of long-term illnesses, including various cancers, digestive tract impairments, and nervous system disabilities.⁸⁷ It has also been linked to problems in pregnancy and childbirth, such as miscarriage, stillbirth, premature birth, and impaired growth in utero leading to disabilities.⁸⁸

⁷⁵ CALIFORNIA UNINCORPORATED, *supra* note 70, at 27-30.

⁷⁶ *Id.* at 27-30.

⁷⁷ UC DAVIS NITRATE REPORT, *supra* note 58, at 9.

⁷⁸ *Id.* at 47.

⁷⁹ *Id.* at 11.

⁸⁰ *Id.* at 11.

⁸¹ UN Report, *supra* note 22, ¶¶ 34–40.

⁸² *Id.* ¶ 34.

⁸³ CALIFORNIA DEPARTMENT OF WATER RESOURCES, CALIFORNIANS WITHOUT SAFE WATER AND SANITATION 8 (2014) [hereinafter CALIFORNIANS WITHOUT SAFE WATER AND SANITATION].

⁸⁴ UC DAVIS NITRATE REPORT, *supra* note 58, at 9.

⁸⁵ *Id.* at 50.

⁸⁶ WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 4. *See also* UC DAVIS NITRATE REPORT, *supra* note 58, at 9.

⁸⁷ WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 4. *See also* UC DAVIS NITRATE REPORT, *supra* note 58, at 9.

⁸⁸ WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 4. *See also* UC DAVIS NITRATE REPORT, *supra* note 58, at 9.

Within the San Joaquin Valley, the worst problems of nitrate contamination are faced by disadvantaged unincorporated communities (DUCs), in which most residents are people of color.⁸⁹ In the San Joaquin Valley, a positive relationship has been identified between communities with a higher proportion of minority residents (specifically Latino residents) and higher nitrate levels in community water systems.⁹⁰

Tooleville, a community of 339 residents, with an 82.3 percent Latino population, is one of the DUCs in Tulare County suffering from the effects of nitrate contamination in groundwater.⁹¹ Tooleville's residents have had nitrate-contaminated water for over a decade.⁹² Both of the community's wells are contaminated with nitrates⁹³ and residents previously poured bleach directly into the wells.⁹⁴

Intensive agricultural practices have also led to the concentration above allowable standards of other contaminants in California groundwater, such as arsenic.⁹⁵ Arsenic is naturally occurring in groundwater, but reaches higher concentrations due to the agricultural activities of irrigation and drainage.⁹⁶ Arsenic contamination in drinking water is linked to skin, lung, bladder, and kidney cancers.⁹⁷ Non-cancerous effects can include thickening and discoloration of the skin, stomach pain, nausea, vomiting, diarrhea, numbness in hands and feet, partial paralysis, and blindness.⁹⁸

ii. Affordability and the Double Cost of Safe Drinking Water

The cost of addressing contaminated water is falling on the affected communities rather than on the polluters.⁹⁹ Contaminated water forces affected communities to pay a double

⁸⁹ UC DAVIS NITRATE REPORT, *supra* note 58, at 27. CALIFORNIA UNINCORPORATED, *supra* note 70, at 30. Fresno County (56.2 mg N/L) has 93 DUCs, population of which is 67 percent people of color; Kern County (43.9 mg N/L) has 105 DUCs, population 55 percent people of color; Tulare County (34.2 mg N/L) has 114 DUCs, population 82 percent people of color.

⁹⁰ Carolina Balazs et al., *Social Disparities in Nitrate-Contaminated Drinking Water in California's San Joaquin Valley*, 119 ENVTL. HEALTH PERSP. 1272 (2011).

⁹¹ See US Census Bureau 2010 Data, *supra* note 67. See also UN Report, *supra* note 22, ¶ 38.

⁹² PACIFIC INSTITUTE, THE HUMAN COSTS OF NITRATE-CONTAMINATED DRINKING WATER IN THE SAN JOAQUIN VALLEY 10, 37 (2011), available at http://www.pacinst.org/wp-content/uploads/sites/21/2013/02/nitrate_contamination3.pdf. See Mark Grossi, *Red tape ties up possible relief from dirty water*, FRESNO BEE, Oct. 3, 2011, <http://www.fresnobee.com/2011/10/03/2554173/red-tape-ties-up-possible-relief.html>.

⁹³ 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, 514-15 (2011).

⁹⁴ The Environmental Justice Coalition for Water, THIRSTY FOR JUSTICE: A PEOPLE'S BLUEPRINT FOR CALIFORNIA WATER 73 (2005), available at <http://www.ejcw.org/ThirstyforJustice.pdf> [hereinafter THIRSTY FOR JUSTICE].

⁹⁵ Carolina Balazs et al., *Environmental justice implications of arsenic contamination in California's San Joaquin Valley: a cross-sectional, cluster-design examining exposure and compliance in community drinking water systems*, 11:84 ENVTL. HEALTH 1, 2 (2012). Other pollutants include pesticides, disinfectant by-products and gasoline additives. WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 12.

⁹⁶ Balazs et al., *supra* note 95.

⁹⁷ *Id.*

⁹⁸ Terria Smith, *Thirsty for drinkable water in Torres Martinez*, REPORTING ON HEALTH MEMBER BLOG (Sep. 30, 2013), <http://www.reportingonhealth.org/2013/09/30/thirsty-drinkable-water-torres-martinez>.

⁹⁹ See PACIFIC INSTITUTE, *supra* note 92.

cost for water, buying clean bottled water in addition to paying the regular bill for undrinkable tap water.¹⁰⁰ In addition, the cost of transportation to buy bottled water¹⁰¹ must be borne by residents of remote areas. In Matheny Tract, a DUC in Tulare County, whose population is 79 percent residents of color.¹⁰² One resident recounts how she pays over \$900 per year in water rates and fees, and hundreds of dollars per year on bottled water for drinking and cooking.¹⁰³ In the town of Beverly Grand, also in Tulare County, 95 percent of the majority Latino population relies upon alternative sources of water due to nitrate contamination.¹⁰⁴ Most households rely upon bottled water for drinking, while 52 percent rely upon non-tap water for cooking as well.¹⁰⁵

The double cost of water in areas experiencing contamination means that the cost of water as a percentage of income is much higher than the accepted range outlined in domestic and international standards of 2.5 to 5 percent. Some residents of DUCs spend over 10 percent of their annual incomes on the combined cost of water system rates and bottled water for consumption.¹⁰⁶ The DUC of Seville, where 95 percent of residents are Latino,¹⁰⁷ the median household income is \$14,000 – \$16,000 a year¹⁰⁸ and residents spend between 6 to 14 percent their income on water alone.¹⁰⁹ The average household's annual water bill of around \$960 is being supplemented with expenditure of at least \$1000 on bottled water.¹¹⁰ Households in other DUCs pay up to \$2200 per year for water.¹¹¹ Given that average household income comes to \$18,000, this means residents of these DUCs are paying over 12 percent of annual income on water alone.¹¹²

The double cost of water also affects public institutions. California public schools are required by law to serve free, clean drinking water if meals are served or eaten on their premises.¹¹³ Schools can opt out if the requirement is too financially burdensome,

¹⁰⁰ UN Report, *supra* note 22, ¶ 39. See GOVERNOR'S DRINKING WATER STAKEHOLDER GROUP, FINAL REPORT TO THE GOVERNOR'S OFFICE: AGREEMENTS AND LEGISLATIVE RECOMMENDATIONS 1 (2012), available at http://www.waterboards.ca.gov/water_issues/programs/groundwater/docs/stakeholders/082020_12_1_final_rep_to_gov.pdf. See also THIRSTY FOR JUSTICE, *supra* note 94, at 82.

¹⁰¹ UN Report, *supra* note 22, ¶ 39.

¹⁰² See US Census Bureau 2010 Data, *supra* note 67. 73.4 percent of the population of 1,212 people is Latino, 3.6 percent is black or African American and 2 percent is American Indian.

¹⁰³ *Drinking Water and Exclusion*, *supra* note 26, at 243.

¹⁰⁴ PACIFIC INSTITUTE, *supra* note 92, at 23, 25.

¹⁰⁵ *Id.* at 26.

¹⁰⁶ *Drinking Water and Exclusion*, *supra* note 26, at 243 (citing Sofia Parino, Ctr. on Race, Poverty & the Env't, Presentation on the Tulare County General Plan, Delano, Cal. (May 28, 2010)).

¹⁰⁷ See US Census Bureau 2010 Data, *supra* note 67. See Scott Kraft, *In tiny Seville, trouble on tap*, L.A. TIMES (Nov. 7, 2010), available at <http://articles.latimes.com/2010/nov/07/local/la-me-seville-water-20101107>. See also Patricia Leigh Brown, *The Problem is Clear: The Water is Filthy*, N.Y. TIMES (Nov. 13, 2012), available at <http://www.nytimes.com/2012/11/14/us/tainted-water-in-california-farmworker-communities.html>.

¹⁰⁸ Francis & Firestone, *supra* note 93, at 499. See also UN Report, *supra* note 22, ¶ 39.

¹⁰⁹ Francis & Firestone, *supra* note 93, at 499. See WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 11. See also UN Report, *supra* note 22, ¶ 39.

¹¹⁰ UN Report, *supra* note 22, ¶ 39.

¹¹¹ *Drinking Water and Exclusion*, *supra* note 26, at 243.

¹¹² *Id.*

¹¹³ SB 1413, 2009-2010 Leg., Reg. Sess., ch. 558 (Cal. 2010); CAL. EDUC. CODE § 38086 (West 2010); 42 U.S.C. § 1758(a)(5) (2010) (known as the "Healthy, Hunger-Free Kids Act of 2010").

although in extreme cases, schools risk losing funding for free or reduced meal programs.¹¹⁴ Despite these laws, many schools lack continuous access to water due to infrastructure and quality issues. Rural community residents have pointed to water quality challenges to compliance with the law in their schools.¹¹⁵

A water advocacy organization in the San Joaquin Valley, reported that 47 of the 146 schools surveyed had 119 violations between them for contaminants, such as arsenic and nitrates, between 2005 and 2007.¹¹⁶ In some 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.¹¹⁷ Schools have had to buy bottled water in order to meet their legal requirements. In Seville, a DUC in Tulare County, the elementary school supplies bottled water in order to provide drinking water to its students, at an additional annual cost of between \$5200 to \$7200.¹¹⁸

iii. Inadequate Infrastructure

“Decades of structural neglect and non-investment” have left the water infrastructure of many communities in the San Joaquin Valley deficient.¹¹⁹ Contamination and decaying infrastructure prevent communities from accessing clean, affordable drinking water. Infrastructure costs are particularly burdensome for rural communities with larger geographies and lower population density.¹²⁰ As of 2010, at least 100 water providers in the San Joaquin Valley were in need of projects to mitigate nitrate contamination, some of them after waiting over a decade.¹²¹ Even where affected communities have received funds for infrastructure improvements to remedy contamination, such investment has either been inadequate or unsustainable, leaving residents exposed to unsafe water.

The installation and maintenance of treatment systems that remove dangerous contaminants often adversely impact affordability, particularly for residents of small communities. Within the small communities affected, the impact of contamination and consequent problems of affordability are disproportionately felt by communities of color.¹²²

These communities face various challenges in accessing government funding for adequate treatment systems. One of the major obstacles is the technical, managerial, and financial information required, such as showing how the community can afford operation and maintenance costs.¹²³ In addition, many communities face funding eligibility

¹¹⁴ Bernice Yeung, *Survey: Drinking water compliance eludes some California schools*, CALIFORNIA WATCH (Oct. 23, 2012), <http://californiawatch.org/dailyreport/survey-drinking-water-compliance-eludes-some-california-schools-18516>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*; WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 11.

¹¹⁹ See *Drinking Water and Exclusion*, *supra* note 26, at 234.

¹²⁰ *Id.* at 237.

¹²¹ PACIFIC INSTITUTE, *supra* note 92, at 10.

¹²² Balazs et al., *supra* note 90. See also UN Report, *supra* note 22, ¶ 40.

¹²³ CALIFORNIANS WITHOUT SAFE WATER AND SANITATION, *supra* note 83, at 17.

limitations, which withhold funding from small water systems and private domestic wells.¹²⁴ Further requirements that can prove challenging for communities to meet include hiring a civil engineer, evaluating and determining the most feasible alternative, and addressing legal issues that arise.¹²⁵

Lanare, a DUC of 589 residents, 90 percent of whom are Latino, received \$1.3 million in government funds for an arsenic treatment facility. The system was forced to close down in just six months due to residents' inability to pay rates sufficient to pay the operating costs of the state-of-the-art system, leaving a debt of more than \$100,000,¹²⁶ which was still being paid off in 2013.¹²⁷ As a result, residents had to return to the consumption of water contaminated by arsenic at two to three times the legal limit.¹²⁸ In Allensworth and Alpaugh, neighboring DUCs in Tulare County, arsenic contamination has also been a critical problem, with community wells exceeding federal arsenic standards.¹²⁹ Alpaugh used to be dependent on trucked-in donations of water for its drinking water supplies.¹³⁰ When it finally received funding to upgrade its infrastructure, the new system did not include specialized treatment for arsenic.¹³¹

In Watsonville, an agricultural community in Santa Cruz County with an 81 percent Latino population, the carcinogen chromium 6 (also known as hexavalent chromium) was detected in eight of twelve municipal wells.¹³² To treat the water, the installation of a \$26 million treatment system that would also require \$1.7 million in annual operating costs has been proposed.¹³³ The current proposal calls for a 78 percent increase to consumers' water bills in order to cover these costs.¹³⁴

iv. Dwindling Water Resources in the Current Drought

California's current drought crisis threatens access to sufficient quantities of water. Many residents and environmental advocates have expressed concern that vulnerable

¹²⁴ *Id.* at 18.

¹²⁵ *Id.* at 17.

¹²⁶ 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. See also Francis & Firestone, *supra* note 93, at 515.

¹²⁷ Mark Grossi, *Lanare lacks health care, clean water, schools*, FRESNO BEE, Apr. 27, 2013, <http://www.fresnobee.com/2013/04/27/3277167/living-in-a-toxic-land-a-history.html>. In Alpaugh, water rates were raised to cover the cost of arsenic treatment. WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 12 n.102.

¹²⁸ California Rural Legal Assistance, *supra* note 126. See also Francis & Firestone, *supra* note 93, at 515.

¹²⁹ Bernice Yeung, *Rural towns devise unique plan to solve water problems*, CALIFORNIA WATCH, May 14, 2012, <http://californiawatch.org/dailyreport/rural-towns-devise-unique-plan-solve-water-problems-16180>.

¹³⁰ THIRSTY FOR JUSTICE, *supra* note 94, at 73.

¹³¹ WATER AND HEALTH IN THE VALLEY, *supra* note 58, at 16; Balazs et al., *supra* note 95, at 10.

¹³² Donna Jones, *Watsonville officials pen cost of proposed drinking water rule in the millions*, SANTA CRUZ SENTINEL, Feb. 10, 2014, http://www.santacruzsentinel.com/watsonville/ci_25108786/watsonville-officials-peg-cost-proposed-drinking-water-rule. See US Census Bureau 2010 Data, *supra* note 67.

¹³³ Jones, *supra* note 132.

¹³⁴ *Id.*

communities simply lack the resources needed to manage drought impacts.¹³⁵ During a drought in 2008, the community of Fairmead faced a severe water shortage to which the mayor responded by driving 300 miles to purchase bottled drinking water after the local well went dry.¹³⁶ A similar situation threatens communities in the San Joaquin Valley today. Much of this area is currently in extreme or exceptional drought status, the highest two categories recognized by the U.S. Drought Monitor.¹³⁷ President Obama recently visited the area and promised drought-related federal relief,¹³⁸ but special programs to assist vulnerable and low-income communities are not in place.

Given the critical nature of the situation, California officials have decided to cut off water to some local agencies to preserve what little water remains in reservoirs.¹³⁹ Agencies that face cuts include all those served by the State Water Project,¹⁴⁰ which is the largest water and power development and conveyance system of reservoirs, aqueducts, power plants, and pumping plants that serve water suppliers throughout the state, including in the San Joaquin Valley.¹⁴¹ This has left local water agencies to look to other sources, such as groundwater.¹⁴² However, for communities in the San Joaquin Valley, this alternative is problematic due to nitrate contamination. Communities therefore face dwindling water resources, which threatens their access to sufficient quantities of clean water for normal daily use.

V. TRIBAL COMMUNITIES

Native American communities also face contamination problems and inadequate access to water. The Special Rapporteur noted that “American Indian communities lack access to safe drinking water ... in disproportionate numbers.”¹⁴³ Some communities face arsenic contamination of their drinking water, while others simply lack access to a steady

¹³⁵ 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), http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=1821.

¹³⁶ Community of Fairmead, Testimony at the Workshop on Rural Advocacy for Policy Reform, Third National Summit on Equitable Development, Social Justice, and Smart Growth (Mar. 7, 2008) (on file with author) (from *Drinking Water and Exclusion*, *supra* note 26, at 224-25).

¹³⁷ National Drought Mitigation Center, *U.S. Drought Monitor – California: April 22, 2014*, U.S. DROUGHT MONITOR, <http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA> (last visited Apr. 25, 2014).

¹³⁸ Federal relief comes in the form of \$100 million for livestock-disaster aid, \$60 million in support of local food banks, and \$13 million for various activities such as conservation and helping rural communities facing water shortages. Scott Smith, *Farmers: Obama’s drought relief efforts lacking*, ASSOCIATED PRESS, Feb. 14, 2014, http://www.times-standard.com/statenews/ci_25145109/farmers-obamas-drought-relief-efforts-lacking.

¹³⁹ Ian Lovett, *Parched, California Cuts Off Tap to Agencies*, N.Y. TIMES, Jan. 31, 2014, http://www.nytimes.com/2014/02/01/us/amid-drought-california-agency-will-withhold-water-deliveries.html?_r=0.

¹⁴⁰ *Id.*

¹⁴¹ Cal. Dep’t of Water Res., *California State Water Project Overview*, STATE OF CAL., <http://www.water.ca.gov/swp/index.cfm> (last visited Apr. 25, 2014).

¹⁴² *Id.*

¹⁴³ UN Report, *supra* note 22, ¶ 63.

water supply. Lack of access to water has a special significance for indigenous groups in California, particularly for traditional and cultural practices.

a. Background and Context

While indigenous people face similar barriers to access as other marginalized groups, these communities also “possess broader rights to water which emanate from their relationship with traditional lands and the natural resources thereof”.¹⁴⁴ The Special Rapporteur points out the recognition in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) that indigenous people have the right to traditionally owned lands and resources (art. 26.1), as well as the right to maintain their spiritual relationship with them (art. 25).¹⁴⁵ Water is a significant theme in many Native American creation stories and is considered sacred by many communities.¹⁴⁶

American Indians and Alaskan Natives make up 1.7 percent of California’s population.¹⁴⁷ There are over 100 federally recognized tribes in the state of California,¹⁴⁸ while the state itself recognizes three tribes.¹⁴⁹ Although there have been some efforts to involve tribes in the planning process regarding water issues, native peoples in the state face a number of continuous threats to their access to water.¹⁵⁰

b. Water Challenges

i. Lack of Access to Safe Drinking Water

Indian Health Services estimate that 2,336 native homes in the state lack access to safe drinking water.¹⁵¹ Many homes simply lack the infrastructure needed for basic water services in their homes. 7,391 homes only have partial or inadequate water systems and an estimated 36,000 people lack a steady supply of safe drinking water.¹⁵² As a result, some community members must resort to using buckets to retrieve water from nearby springs or creeks.¹⁵³ One tribal member, reflecting on the barriers to access to water, commented that some members of tribal communities were living in third-world conditions.¹⁵⁴

¹⁴⁴ *Id.* ¶ 65.

¹⁴⁵ *Id.* ¶ 68 quoting United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

¹⁴⁶ Don L. Hankins, *Water as Sacred*, in TRIBAL WATER STORIES 66-67 (Kym Trippsmith, ed., 2010).

¹⁴⁷ U.S. Census Bureau, *State and County Quick Facts: California*, U.S. DEPARTMENT OF COMMERCE, <http://quickfacts.census.gov/qfd/states/06000.html> (last visited Apr. 25, 2014).

¹⁴⁸ BUREAU OF INDIAN AFFAIRS, TRIBAL LEADERS DIRECTORY §4, at 10-15 (Fall/Winter 2013), available at <http://www.bia.gov/cs/groups/public/documents/text/idc002652.pdf>.

¹⁴⁹ *Federal and State Recognized Tribes: State Recognized Tribes*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#State> (last updated Apr. 2014).

¹⁵⁰ 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_Proceedings_Full_v2df_02-08-10.pdf [hereinafter PROTECT OUR SACRED WATER].

¹⁵¹ CALIFORNIANS WITHOUT SAFE WATER AND SANITATION, *supra* note 83, at 9.

¹⁵² *Id.*

¹⁵³ CALIFORNIANS WITHOUT SAFE WATER AND SANITATION, *supra* note 83, at 22.

¹⁵⁴ PROTECT OUR SACRED WATER, *supra* note 150, at 27.

Even where access to water exists, contamination prevents the enjoyment of a safe drinking water supply. Arsenic is a problem for the Torres Martinez Desert Cahuilla Indians in California's Coachella Valley.¹⁵⁵ Much of the reservation lies underwater, flooded with polluted agricultural runoff.¹⁵⁶ For the last ten years, the 180 residents of the reservation have been advised not to drink their tap water due to arsenic levels in the groundwater.¹⁵⁷ The arsenic MCL is set at 0.010 parts per billion; when last tested in 2012, a well on the reservation contained arsenic at 13 parts per billion.¹⁵⁸ Senior citizens on the reservation are issued bottled drinking water, but other residents do not receive such assistance.¹⁵⁹

ii. Access to Water for Ceremonial and Traditional Practices

For Native American tribes, changes in access to and quantity of water have an impact on their livelihoods as well as prevent them from continuing important traditional activities.

Threats to traditional practices involving water can result from actions intended to improve water resources, like the construction and operation of dams. Dams impact the flow and level of water in lakes and rivers, disrupting traditional practices, such as fishing.¹⁶⁰ Dams can also lead for the loss of culturally significant plants and animals through habitat conversion, changed hydrology and water chemistry, and barriers to passage.¹⁶¹ Two dams, the Klamath River Dam and Shasta Dam, both in Northern California, are especially troublesome for California tribes.¹⁶²

The Special Rapporteur specifically points to the centrality of water to the identity of the Winnemem Wintu tribe in California.¹⁶³ A plan to raise the level of the Shasta Dam, which devastated the tribe when it was built in the 1940s, would flood dozens of sacred sites.¹⁶⁴ The proposal to raise water levels by several feet would provide water to farmers in the Central Valley at the cost of the tribe's sacred traditions. The tribe has already been forced to change its traditions surrounding fishing because the dam's impact on water levels has prevented salmon from passing upstream.¹⁶⁵

The inaccessibility of water for use in religious ceremonies already threatens the cultural rights of tribes.¹⁶⁶ The Winnemem Wintu tribe faces disruptions of cultural practices due

¹⁵⁵ Smith, *supra* note 98.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ PROTECT OUR SACRED WATER, *supra* note 150, at 9.

¹⁶¹ Hankins, *supra* note 146, at 67.

¹⁶² PROTECT OUR SACRED WATER, *supra* note 150, at 9.

¹⁶³ UN Report, *supra* note 22, ¶ 66. Although the tribe is not federally recognized, the Special Rapporteur points out that “[t]ribal existence and identity do not depend on federal recognition or acknowledgment of the tribe.” *Id.* ¶ 67.

¹⁶⁴ Dean Murphy, *At War Against Dam, Tribe Turns to Old Ways*, N.Y. TIMES, Sept. 14, 2004, http://www.nytimes.com/2004/09/14/national/14tribe.html?_r=0.

¹⁶⁵ PROTECT OUR SACRED WATER, *supra* note 150, at 26.

¹⁶⁶ UN Report, *supra* note 22, ¶ 68.

to harassment and intrusion by fishermen and boats on traditional sites on Shasta Lake.¹⁶⁷ 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.¹⁶⁸ Limits on the tribe's access to its traditional water resources threatens its cultural heritage.

Furthermore, the Winnemem Wintu tribe lives outside of the boundaries of a city and thus is not connected to the public water system and it is not financially feasible for the community to drill a private well.¹⁶⁹ Individual households must therefore find alternative means of connecting to water sources, which may take the form of a partnership with the nearest city or the county.¹⁷⁰ Because the community is categorized as a grouping of individual households rather than as a tribe, it is generally ineligible for financial assistance for water-related projects.¹⁷¹ The lack of federal recognition of the Winnemem Wintu has greatly limited the options available to the tribe to secure access to a continuous supply of safe drinking water as well as to water resources for traditional and ceremonial purposes.¹⁷²

iii. Affordability

The Kashia Band of Pomo Indians, located in Sonoma County, faces affordability issues brought about by upgraded drinking water and wastewater treatment systems.¹⁷³ Updates to the system were needed to bring water quality into compliance regarding its turbidity levels.¹⁷⁴ The new system is computerized and requires expertise that local water treatment operators do not have, which has led to system failure and high repair costs in the past.¹⁷⁵ Any further breakdown could threaten the system's sustainability.

VI. URBAN COMMUNITIES

Urban communities of color in California also face challenges related to water. Some communities' only water supply is contaminated by industrial waste. Within California's urban centers, homeless communities increasingly face barriers to access to water and sanitation in public places. Finally, urban communities face gaps in the regulation of water rates, which leave them vulnerable to rate increases.

a. Water Challenges

i. Contamination and Water Quality

¹⁶⁷ Marc Dadigan, *Winnemem Wintu Tribe Struggles to Protect Sacred Sites*, HUFFINGTON POST, July 17, 2012, http://www.huffingtonpost.com/2012/07/17/winnemem-wintu_n_1681397.html [hereinafter *Winnemem Wintu Sacred Sites*].

¹⁶⁸ *Id.*

¹⁶⁹ UN Report, *supra* note 22, ¶ 68.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Winnemem Wintu Sacred Sites*, *supra* note 167.

¹⁷³ CALIFORNIANS WITHOUT SAFE WATER AND SANITATION, *supra* note 83, at 25.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

As in rural California, urban communities of color experience contamination problems, often caused by industry waste. Maywood, a low-income community in South East Los Angeles County, has a population of around 27,000 people, 96.7 percent of whom are Latino.¹⁷⁶ Tests by the California Department of Public Health have confirmed that the community's water supply contains lead, mercury, manganese, and diethylhexyl phthalate at high levels.¹⁷⁷ The presence of manganese has made the water brown or black and foul-smelling and tasting – in other words, undrinkable.¹⁷⁸ The drinking water also contains trichloroethylene, a highly toxic byproduct of industrial waste which is present in the region's groundwater aquifer.¹⁷⁹ Despite these results, neither the government nor the water companies have acted to address the contamination and provide clean water to the community.¹⁸⁰

ii. Lack of Access to Water in Public Places for Vulnerable Groups

Public facilities, such as parks, schools, and other public buildings, provide important points of access to water for marginalized groups. The population of homeless people in California is greatly impacted by a lack of access to water in public spaces. People of color constitute around 45 percent of the homeless population in Sacramento,¹⁸¹ 60 percent in Los Angeles,¹⁸² and 50 percent in San Francisco.¹⁸³ A trend in local policy 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 persons to access water and sanitation.¹⁸⁴ The Special Rapporteur visited homeless people in Sacramento, California, noting that for one community there were only three sources of potable water, located from one-half mile to one-and-a-half miles away from their encampment, although one had been removed and capped by the city.¹⁸⁵ With no alternative, people are forced to use

¹⁷⁶ See US Census Bureau 2010 Data, *supra* note 67.

¹⁷⁷ COMMUNITY WATER CENTER, GUIDE TO COMMUNITY DRINKING WATER ADVOCACY 31 (2009), available at http://www.communitywatercenter.org/cwc_community_guide [hereinafter CWC GUIDE].

¹⁷⁸ *Id.* at 31.

¹⁷⁹ CWC GUIDE, *supra* note 177, at 31. See Wells, *supra* note 178.

¹⁸⁰ CWC GUIDE, *supra* note 177, at 31.

¹⁸¹ In Sacramento, African Americans constitute 18.1 percent of the homeless population, while American Indians/Alaskan Natives make up 4.7 percent, Latinos 11.2 percent, and 11.6 percent of the population is multi-racial. 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/RedevelopmentCommunityRevitalization/CDBG/ActionPlans/2013HomelessPoint-in-TimeCount.pdf>.

¹⁸² The homeless population in Los Angeles is disproportionately composed of African Americans, who make up 38 percent of the city's homeless population, while Latinos make up 22 percent of the city's homeless population. 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>.

¹⁸³ In San Francisco, 26 percent of the homeless population is Latino while 24 percent is African American. Both numbers are disproportionate to the population of the city as a whole, which is 16 percent Latino and 6 percent African American. 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>.

¹⁸⁴ UN Report, *supra* note 22, ¶¶ 56, 94(i).

¹⁸⁵ 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>.

river water, which can result in illness and other health impacts.¹⁸⁶ Limited access can also lead contact with law enforcement as this population seeks to secure alternative sources of water and sanitation.

ii. Gaps in the Regulation of Water Rates

Affordability problems are created by gaps in the regulation of water rates. While the California Public Utilities Commission has oversight over water providers that qualify as public utilities, requiring their rates to be reasonable and that customers be notified regarding proposed increases with the possibility of a public hearing to discuss the increase.¹⁸⁷ However, the CPUC either does not have jurisdiction or has limited jurisdiction over certain private providers, for example, such as those in mobile home parks.¹⁸⁸ This gap in regulation leaves many residents vulnerable to unjustified rate increases.

VII. PUBLIC ENGAGEMENT AND GOOD GOVERNANCE

Many communities of color lack access to the institutions and information which are key to remedying the violations they face of their right to access clean and affordable water in sufficient quantities.

a. Barriers to Public Participation

Language barriers and inadequate translation services severely limit the forms of public participation communities of color can engage in regarding water services. Language and translation problems mean that many immigrant residents are not even aware of problems with their water, such as contamination. One study found that, while 43 percent of people surveyed within the San Joaquin Valley did not know of nitrate problems in their water systems, this percentage was even higher within Spanish-speaking households, who were much less likely to know that their water was affected by nitrate contamination and the resulting safety implications.¹⁸⁹

While the state of California has established notification requirements which include some provision for translation, actual perception of nitrate contamination remains influenced by English-language proficiency.¹⁹⁰ Reports that notifications are not provided by water providers in Spanish, even to communities where the majority of residents are primarily Spanish-speaking, are common.¹⁹¹ This was the case in Tonyville, a DUC in Tulare County with a 90.5 percent Latino population and with 316 primarily Spanish-

¹⁸⁶ *Id.*

¹⁸⁷ Cal. Pub. Util. Code §§ 216(a) & (b), 240, 241, 451, 454, 2701 (West, Westlaw through Ch. 185 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot). *See also* CWC GUIDE, *supra* note 177, at 120–21.

¹⁸⁸ Cal. Pub. Util. Code §§ 2705, 2705.5, 2705.6, 2706 (West, Westlaw through Ch. 185 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot). *See also* CWC GUIDE, *supra* note 177, at 120.

¹⁸⁹ PACIFIC INSTITUTE, *supra* note 92, at 7.

¹⁹⁰ *Id.* at 33.

¹⁹¹ *Id.* at 34.

speaking residents. Despite this demographic, it was not until the community association petitioned their water provider for Spanish translation of water assessment and quality reports that they became aware that the system was relying on nitrate-contaminated groundwater for part of the year.¹⁹²

In part due to this language barrier, there is a lack of effective engagement between state agencies and the communities of color affected by violations of the right to water. The guidelines used by state agencies to facilitate public participation by residents often result in the exclusion of communities of color, whose members may not be fluent in English, be able to travel long distances during work hours to attend meetings, or have the technical knowledge to follow the decision-making processes about water that directly impact them.¹⁹³

State agencies often hold meetings during working hours on weekdays, and hundreds of miles away from the communities under discussion, effectively excluding the involvement of most community members.¹⁹⁴ For those who attempt to attend meetings, the attendant formalities serve to discourage further participation by people of color. For example, many meetings are held in the State Capitol or other high-security locations, which may discourage attendance by immigrant residents.¹⁹⁵ Even when in attendance, many immigrant residents face further hindrances to effective participation because of inadequate translation services. Most public meetings on water are both advertised and carried out in English, and translation is limited, as most agencies have not set aside funding for translation equipment or services.¹⁹⁶

Residents who wish to apply for funding or other assistance programs may also encounter barriers. Many application materials and information about state water funding programs that might alleviate water challenges are only available in English.¹⁹⁷ While many agencies have digitized the applications for state water funding programs and made them available online, this has resulted in the exclusion of people without computer and internet access and those who are no computer literate.¹⁹⁸ Even for people with internet access, some agencies are considerably better than others at making relevant information accessible and user-friendly.¹⁹⁹

b. Transparency and Accountability

Many communities of color encounter problems engaging with state agencies due to the convoluted nature of the water governance system in California; a lack of access to information regarding water quality, projects, and funding; and the inadequate and slow

¹⁹² CWC GUIDE, *supra* note 177, at 28. See *US Census Bureau 2010 Data*, *supra* note 67.

¹⁹³ THIRSTY FOR JUSTICE, *supra* note 94, at 61.

¹⁹⁴ Francis & Firestone, *supra* note 93, at 532.

¹⁹⁵ THIRSTY FOR JUSTICE, *supra* note 94, at 64.

¹⁹⁶ *Id.* at 62.

¹⁹⁷ *Id.* at 54–55.

¹⁹⁸ *Id.* at 62.

¹⁹⁹ See e.g. CalEPA's environmental justice page (<http://www.calepa.ca.gov/EnvJustice/>) for a good example, and the California DPH's website (<http://www.cdph.ca.gov/Pages/DEFAULT.aspx>) for one that is much more difficult to navigate.

government response to water problems. This lack of transparency inhibits accountability on the part of government agencies.

The state's constitution provides that water resources "be put to the beneficial use to the fullest extent of which they are capable" and that "conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."²⁰⁰ Despite this clear mandate, the water code "created an elaborate and often contradictory system of state agencies and local water districts."²⁰¹

The allocation of regulatory responsibility across different state agencies illustrates a "hodge-podge, 'design as you go' system,"²⁰² which presents both transparency and accountability problems. More than ten different state agencies and sub-agencies regulate long- and short-term water planning and use, which has resulted in overlapping and contradictory mandates.²⁰³ This system becomes even more convoluted in times of water scarcity, during which "these competing mandates often set agencies at opposite ends as they attempt to distinguish the proper priority and weight each water use should hold."²⁰⁴ The state's commitment to clean drinking water is separate from its water quality enforcement provisions, while the right to access water is separate from other policy priorities for water.²⁰⁵

Tulare County illustrates the convoluted governance structure of water policy in California. The county's water is managed by the Central Valley Regional Water Quality Control Board, operating under the State Water Resources Control Board.²⁰⁶ On the county level, there are more than thirteen governance programs, nine sewage districts, and three irrigation districts.²⁰⁷ As a result, community residents often do not know who to turn to regarding water rate, quality, or supply issue. Furthermore, agencies themselves have difficulty collaborating to meet these water needs.

Compounding this, citizens do not have the right to elect directors of statewide water management agencies, leaving these directors unaccountable to the public.²⁰⁸ Regional water quality boards are also appointed by the state governor as sub-entities of the state's Water Resources Control Board.²⁰⁹ This allows "powerful donors, lobbying interests, and advocacy groups to prevail through the appointments process."²¹⁰ Californians therefore "have no method of redress or petition to state boards beyond narrow regulatory

²⁰⁰ Cal. Const. art. 10, § 2.

²⁰¹ *Drinking Water and Exclusion*, *supra* note 26, at 239.

²⁰² *Id.* at 245.

²⁰³ *Id.* at 246.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 253.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 248. Department heads, agency secretaries, and board members are all appointed by the governor and then confirmed by the state senate. *Id.*

²⁰⁹ CAL. WATER CODE § 13200 (West 2012); *see Drinking Water and Exclusion*, *supra* note 26, at 248.

²¹⁰ *Drinking Water and Exclusion*, *supra* note 26, at 250.

exchanges or commentary at public hearings” as there is no clear system of accountability apart from directing complaints to the legislature or governor.²¹¹

The California Health and Safety Code acknowledges the right of every citizen “to pure and safe drinking water”²¹² and outlines monitoring and information-gathering responsibilities for the state’s Department of Public Health.²¹³ There are some enforcement mechanisms if water contamination threatens human health, although this risks shutting down wells and effectively removing the only source of water for small communities.²¹⁴

Additionally, government response to known issues of contamination and infrastructure problems has been troubling. Delays of multiple years have left communities without adequate access to affordable, clean drinking water. For example, the farm worker cooperative of San Jerardo in the Salinas Valley had a series of three wells, which all became contaminated with nitrates and trichloropropane within a decade of each other. Monterey County applied for a grant on behalf of the community, which was approved, but the funds took five years to be disbursed. The grant money was used to fund a project which was finished in 2010, almost ten years after the third well became contaminated.²¹⁵ This delay in project financing has been seen in other communities as well.

²¹¹ *Id.* at 250. The costs of traveling to lobby the government and campaigning to engage voters to achieve a policy directive is high for rural residents, who are so dispersed that they lack the concentrated populations that would traditionally support community organizing. *Id.*

²¹² CAL. HEALTH & SAFETY CODE § 116270(a) (West, Westlaw through Ch. 185 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot); see *Drinking Water and Exclusion*, *supra* note 26, at 241.

²¹³ CAL. HEALTH & SAFETY CODE §§ 116325-116345 (West, Westlaw through Ch. 185 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot); see *Drinking Water and Exclusion*, *supra* note 26, at 241.

²¹⁴ See *Drinking Water and Exclusion*, *supra* note 26, at 242 n.100.

²¹⁵ Interview with Horacio Amezcua, General Manager, San Jerardo Cooperative (March 13, 2014) (notes on file with author).

VIII. 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:

- Address water contamination at both the source and point of use to ensure that water quality supports the health and safety of the natural environment and consumers.
- Ensure that accessing clean drinking water, especially the treatment needed for contaminated water, does not create undue burdens on affected communities and negatively affect their ability to fulfill other basic needs.
- Improve engagement between the government and community members, particularly with disadvantaged communities, to ensure their meaningful participation in identifying water challenges and creating responsive and sustainable solutions.
- Ensure funding criteria and processes for emergency assistance and infrastructure improvements are accessible to marginalized communities and that needed technical assistance is available.
- Increase access by the public to current, audience-appropriate information about agency activities and decisions, accounting for language diversity and barriers in access to technology.
- 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 at-risk and disadvantaged communities.
- 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 communities.