Minding the Gap: Increasing the Accessibility of Legal Information and Assistance to Empower Communities and Implement California Water Law and Policy to Increase Clean Water Access For Disadvantaged Communities

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INTRODUCTION

Over one million Californians lack access to safe drinking water.[1] However, disadvantaged, low-income communities of color are disproportionately impacted by

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[1] Tatiana Sanchez, *Safe Drinking Water Evades the Poor: Filters Provide a Temporary Solution*, THE DESERT SUN, (Apr. 23, 2015), *available at* http://www.desertsun.com/story/news/environment/2015/04/23/dire-drought-desert-water/26209267/.

inadequate clean water access.[2] Rural communities in the San Joaquin and Salinas Valley are especially vulnerable because they rely on small water systems and over-drafted groundwater sources for drinking water.[3] Small water systems are particularly vulnerable to contamination problems, as they tend to have more physically unreliable infrastructures and lack adequate funding and technical capacity for water infrastructure projects.[4]

There is a range of possible solutions for small systems to address groundwater contamination problems.[5] Small systems can consolidate with larger systems or nearby small systems to build larger ratepayer bases and economies of scale, treat contaminated groundwater sources, and use surface water sources, bottled water, or point-of-use treatment until long-term solutions can be implemented.[6] However, there is no single solution that will meet every community's drinking water needs; every small system will require individualized analyses and solutions specifically tailored to meet the unique needs of each community.[7] In order to do so, communities will need legal assistance to implement effective, affordable, long-term drinking water solutions for small systems.

This paper explores two recent trends in California water law and policy, namely a shift toward local water governance and universal clean water access, and to argue that increasing the availability and accessibility of legal information and assistance tools would implement California water law and policy as intended by the state legislature.

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[2] U.C. BERKELEY, SCH. OF LAW, INT'L HUMAN RIGHTS LAW CLINIC, THE HUMAN RIGHT TO WATER BILL IN CALIFORNIA: AN IMPLEMENTATION FRAMEWORK FOR STATE AGENCIES, 4 (May 2013) [hereinafter BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK], *available at* http://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf.
[3] *Id. at* 3 n. 14, 4 nn. 36-37.
[4] Deb Martin, Rural Community Assistance Partnership, Affordability and Capability Issues of Small Water and Wastewater Systems: A Case for Regionalization of Small Systems, *available at* http://www.rcap.org/sites/default/files/rcap-files/Regionalization%20Great%20Lakes%20RCAP%20final.pdf.
[5] U.C. DAVIS CNTR. FOR WATERSHED SCIENCES, ADDRESSING NITRATE IN CALIFORNIA'S DRINKING WATER: WITH A FOCUS ON TULARE LAKE BASIN AND SALINAS VALLEY GROUNDWATER, 6 (Jan. 2012) [hereinafter U.C. DAVIS NITRATE REPORT], *available at* http://groundwaternitrate.ucdavis.edu/files/138956.pdf.
[6] *Id.* at 6.
[7] *Id.* at 5.

Making legal information about funding opportunities and local governance both available and accessible empowers disadvantaged communities of color by increasing meaningful public participation and accountability to achieve long-term clean water solutions. For this paper, I interviewed seven community drinking water practitioners, from five organizations that support drinking water solutions serving local community water systems without safe drinking water, to help identify and understand legal information and assistance needs.[8] The purpose of these interviews was to identify and understand what legal information and assistance tools would be most useful in accelerating clean water solutions for small, rural communities.

Part I provides background for understanding the problem. Subsection A provides the factual background of the clean water access problem and how it disproportionately impacts disadvantaged communities. Subsection B covers the legal background with an introduction to water governance structures at the state and local levels, as well as a discussion of rural community governance issues. Subsection C illustrates California's recent legislative efforts to increase clean water access for disadvantaged, rural communities, and subsection D will cover possible solutions for small water systems.

Part II highlights the gap between California water law and policy as it was intended and the ways in which these new legislative efforts fall short of adequately solving the clean water access problem for the very communities they are intended to serve. Subsection A delineates the lack of available legal information, as well as a lack of access to information, and how it undermines California's recent legislative efforts. Subsection B makes suggestions as to how to bridge the gap by providing information access and legal assistance in order to empower communities to increase clean water access and effectuate California water law and policy as it was intended.

I. BACKGROUND: THE PROBLEM

[8] Organizations included Community Water Center, California Rural Legal Assistance Salinas, Pueblo Unido, Self Help Enterprises, and Rural Community Assistance Corporation.

Many of California's disadvantaged unincorporated communities lack access to clean water and effective regulatory systems that allow them voice and participation. Recently, California has acknowledged the problem and has provided a number of new programs and funding resources intended to help these communities upgrade their water infrastructure and improve governance over water resources. However, access to these solutions is a problem in itself and communities will require legal assistance to gain access to these resources.

A. Factual Background

Groundwater is a crucial resource in California.[9] In 2013, the State Water Resources Control Board (SWRCB) estimated in its report to the legislature that 85% of community public water systems, supplying water to over 30 million residents, rely on groundwater for their drinking water supply.[10] Groundwater, however, is also vulnerable to contamination. One report identified 680 community water systems, serving 21 million Californians, which rely on a contaminated groundwater source.[11] And, 75% of these systems rely entirely on groundwater sources for drinking water.[12]

The remarkably poor quality of drinking water sources in rural communities stems from proximity to large-scale agricultural activity.[13] Nitrate, a byproduct of nitrogen used for agricultural purposes, is one of California's most predominant groundwater contaminants.[14] Further, 96% of human-generated nitrate contamination of groundwater sources comes from agricultural fertilizers and animal manure applied to

[9] U.C. DAVIS NITRATE REPORT, *supra* note 5, at 9.
[10] STATE WATER RES. CONTROL BD. (SWRCB), REPORT TO THE LEGISLATURE: COMMUNITIES THAT RELY ON A CONTAMINATED GROUNDWATER SOURCE FOR DRINKING WATER, 11 (Jan. 2013) [hereinafter 2013 SWRCB GROUNDWATER REPORT TO THE LEGISLATURE], http://www.waterboards.ca.gov/water_issues/programs/gama/ab2222/docs/ab2222.pdf.
[11] *Id.* at 11.
[12] *Id.* at 12.
[13] 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 Decisionmaking*, 47 WILLAMETTE L. REV. 495, 499 (2011).
[14] U.C. DAVIS NITRATE REPORT, *supra* note 5, at 2.

cropland.[15] In 2006, over 20% of public water systems in the Central Valley exceeded the state's Maximum Contamination Level (MCL) for nitrate.[16] Drinking water contamination is likely to be understated, since these statistics do not include unregulated small water systems and private wells.[17] Nitrate contamination will likely worsen as nitrate from fertilizer, animal manure, and other sources, continues to percolate into underground drinking water wells.[18] Due to recent drought conditions, California's reliance on groundwater will probably increase as surface water availability decreases.[19] These conditions are likely to last, if not worsen, as global warming impacts California's dwindling surface water supply.[20]

Communities in the Central Valley have the most contaminated drinking water sources and are disproportionately impacted by the lack of safe water access.[21] Rural communities typically rely on unregulated private wells or small community water systems that serve less than 3,300 people.[22] Small water systems lack the technical and economic capacity to manage complex nitrate contamination challenges and reach the economies of scale necessary to pay for operational and maintenance costs for treatment and alternative clean water solutions.[23] Because private wells and small water systems are often unregulated, many communities lack information about their drinking water quality.[24] As such, they are more susceptible to nitrate contamination than deeper wells and larger systems.[25]

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[15] *Id.*
[16] CAL. DEP'T OF PUB. HEALTH, DRINKING WATER PROGRAM, ANNUAL COMPLIANCE REPORT FOR PUBLIC WATER SYSTEMS IN CAL. app. A-B (2006), http://www.cdph.ca.gov/certlic/drinkingwater/Documents/DWdocuments/AnnualComplianceReport2006.pdf.
[17] Camille Pannu, *Drinking Water and Exclusion: A Case Study From California's Central Valley,* 100 CAL. L. REV. 223, 244 (2012).
[18] U.C. DAVIS NITRATE REPORT, *supra* note 5, at 3.
[19] 2013 SWRCB GROUNDWATER REPORT TO THE LEGISLATURE, *supra* note 10, at 7.
[20] *Id.*
[21] U.C. DAVIS NITRATE REPORT, *supra* note 5, at 2.
[22] 2013 SWRCB GROUNDWATER REPORT TO THE LEGISLATURE, *supra* note 10, at 14.
[23] Disadvantaged communities have median household incomes less than 80% of the state average.
[24] GOVERNOR'S DRINKING WATER STAKEHOLDER GROUP, FINAL REPORT TO THE GOVERNOR'S OFFICE, 6 (Aug. 2012) [hereinafter 2012 REPORT TO THE GOVERNOR'S OFFICE], *available at*

The lack of clean water access has significant economic and health consequences. In the Central Valley, some households spend approximately 20% of their annual median income of $14,000 to pay for both bottled water and water services from their local district.[26] In some communities, up to 95% of residents have to buy bottled or purified water.[27] Exposure to nitrate contaminated drinking water sources has been linked to thyroid disease and "blue baby syndrome", a potentially fatal condition in infants that compromises the blood's ability to carry oxygen.[28] It can also cause hormone disruption, birth defects, and miscarriages.[29]

Many disadvantaged rural communities are incorporated and, as a result, suffer from a lack of access to effective government. Unincorporated communities are predominantly communities of color that have been structurally excluded from formal cities.[30] One study found that there are 219 low-income unincorporated communities in the eight counties of the San Joaquin Valley.[31] Because of their unique geographic disposition, rural communities need alternative water infrastructures and solutions.[32] Laws regarding groundwater management and rural community governance structures are fragmented and complex, resulting in a similarly fragmented water delivery system with frequently deteriorating infrastructures.[33] The following section will provide an introduction to California water governance structures, at both local and state levels, to

http://www.waterboards.ca.gov/water_issues/programs/groundwater/docs/stakeholders/08202012_1_final_rep_to_gov.pdf.
[25] *Id.*
[26] *See* Mark Grossi, *Tainted Water Flows From Taps of Rural California Valley Homes,* THE FRESNO BEE, Oct. 1, 2011, *available* at http://www.thestate.com/latest-news/article14398877.html.
[27] *Id.*
[28] *Janice Woodard et. al., Nitrates in Household Water, VA. COOP. EXTENSION (2009), available at* http://nasdonline.org/static_content/documents/1439/d001233.pdf.
[29] *Id.*
[30] *Id.*
[31] Pannu, *supra* note 17, at 260.
[32] *Id.*
[33] Patricia Leigh Brown, *The Problem is Clear: The Water is Filthy*, THE N.Y. TIMES, Nov. 13, 2012, *available at* www.nytimes.com/2012/11/14/us/tainted-water-in-california-farmworker-communities.html?_r=0.

highlight the challenges these structures present in achieving effective rural community governance of water resource management and control.

B. Legal Background

1. Water Governance Structures in California

a. Introduction to Water Governance Structures at the State Level

The California Constitution requires state water resources to "be put to beneficial use to the fullest extent of which they are capable."[34] To ensure the "most beneficial uses" of the state's water resources, the state enacted a water code that created an elaborate system of state agencies and local water districts.[35]

In California, the use of surface water resources is regulated using a permitting system, while groundwater use does not require a permit and is mostly unregulated.[36] Until recently, overlying land owners were allowed to drill wells and pump out as much water as they could use "reasonably and beneficially."[37] Because the state imposed very few groundwater quality regulations, private wells were almost completely unregulated.[38] Finally, in 2014, California adopted a legal framework for groundwater management for the first time.[39] In addition to state agencies, California uses a system of public and quasi-public local water districts to distribute water.[40] Because of the high costs associated with

[34] CA. CONST. art X, § 2
[35] Pannu, *supra* note 17, at 239.
[36] WATER EDUCATION FOUNDATION, THE 2014 SUSTAINABLE GROUNDWATER MANAGEMENT ACT: A HANDBOOK TO UNDERSTANDING AND IMPLEMENTING THE LAW 9 (May 2014) [hereinafter WATER EDUCATION FOUNDATION'S SGMA HANDBOOK], *available at* http://www.watereducation.org/sites/main/files/file-attachments/groundwater_act_handbook.pdf.
[37] *Id.*
[38] CAL. WATER CODE § 10750-10750.10 (Deering 2015).
[39] Ian James, *Gov. Jerry Brown Signs Landmark Groundwater Legislation*, THE DESERT SUN, Sept. 30, 2014, http://www.desertsun.com/story/news/environment/2014/09/16/california-groundwater-legislation/15725863/.
[40] Pannu, *supra* note 17, at 251.

moving into state water governance structures, many small rural communities rely on local water governments.[41]

b. Introduction to Water Governance Structures at the Local Level

California's local governance structure is complicated and fragmented. Originally, legislators intended water governance to be flexible to promote local control and innovation in recognition of the unique nature of each community's water resources and needs.[42] As such, California water governance structure provides for a variety of options for organization, including at least 14 different ways to form a local water government district.[43] *Public systems* provide water to all residents within its territory. Many rural communities in the Valley, however, are small, with fewer than 1,000 residents, and are unable to acquire the economies of scale necessary for public water districts to build water infrastructure affordably.[44]

In most disadvantaged rural communities, water is governed by *quasi-public* systems.[45] Quasi-public systems are, in effect, private, tax-exempt districts that have state-delegated authority to issue public bonds and exercise powers of eminent domain and taxation.[46] In the Central Valley, irrigation districts, reclamation districts, and improvement districts are the most common quasi-public districts.[47] In these districts, voting rights are limited to individuals who own land within the district.[48] Most quasi-

[41] *Id.*
[42] CAL. WATER CODE § 380 (Deering 2015)
[43] Pannu, *supra* note 17, at 251.
[44] Faqir Singh Bagi, *Small Rural Communities' Quest for Safe Drinking Water*, 17 RURAL AMER. 40 (Fall 2002), *available at* http:// www.ers.usda.gov/publications/ruralamerica/ra173/ra173g.pdf, 160
[45] *Individual State Descriptions*, U.S. CENSUS OF GOVERNMENTS (2007), http://www2.census.gov/govs/cog/isd_book.pdf (last visited April 27, 2015).
[46] *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 735-42 (1972) (Douglas, J. dissenting).
[47] U.S. CENSUS BUREAU, 2007 CENSUS OF GOVERNMENTS, INDIVIDUAL STATE DESCRIPTIONS (U.S. GOV'T. PRINTING OFFICE REPRT., 2012).
[48] Pannu, *supra* note 17, at 259.

public districts allocate votes according to the value of a landowner's property, so those who own land yield more political power, while those who do not own land are ineligible to vote.[49] Most rural districts are quasi-public and most residents, who are renters and farmworkers, are precluded from formally participating in decisions regarding water allocation and infrastructure investments that impact them the most.[50]

In contrast, *private systems* are treated like private companies, so they can sell water to districts at high prices, which are passed along to water users through higher rate payments.[51] *Mutual water companies* are private companies formed for the purpose of distributing water, and are owned by investing shareholders.[52] Before 2014, there were few groundwater quality regulations, so private water use was virtually unregulated.[53] Due to the state's failure to regulate groundwater withdrawals, residents must compete with the industrial agriculture industry for scarce water resources with no alternative drinking water sources to fall back on.[54]

These three types of local water governance create a framework from which a diverse array of local governance structures can be formed.[55] The result is a fractured, albeit diverse, local governance system that completely overlooks the drinking water needs of disadvantaged rural communities. This complex water governance structure is distributed across state agencies and local governments and lacks transparency, accountability, and affordability. It has effectively created barriers to meaningful political participation and civic engagement, thus failing to include all stakeholders in the decision-making process for safe water solutions.[56] This failure undermines California's

[49] CAL. WATER CODE §§ 20930, 30700.5-30700.6, 36490, 39903 (Deering 2015).
[50] *Local Governments and Public School Systems by Type and State: 2007* U.S. CENSUS OF GOVERNMENTS (APRIL 27, 2015), https://www.census.gov/govs/cog/GovOrgTab03ss.html.
[51] CAL. PUB. UTIL. CODE § 2725 (Deering 2011).
[52] *Id.*
[53] CAL. WATER CODE §§ 10750-10750.10 (Deering 2011).
[54] Pannu, *supra* note 17, at 259.
[55] *Id.*
[56] Pannu, *supra* note 17, at 260.

policy objectives of ensuring that water resources are put to the most beneficial uses and that every individual has access to safe drinking water.[57]

Most communities in the Central Valley live within the boundaries of two or more water districts.[58] Nevertheless, most rural districts are quasi-public, thereby ensuring that residents of those areas are precluded from participating in the district's decisions relating to water allocation and infrastructure development.[59] In addition, the Water Code grants priority to water districts over counties, allowing water districts to enforce their water claims before other claimants.[60] As overlapping districts compete for allocations from the same water sources, rural communities continue to lack access to safe water and pay extravagant domestic water costs compared to urban communities.[61] This system of local water governance subordinates the rights of county residents to those of municipal residents.[62]

2. Rural Community Water Governance Issues

Many rural communities in the Central Valley are unincorporated. One study identified over 450 unincorporated communities in the Central Valley. Unincorporated communities often lack the infrastructure of their incorporated counterparts, including streetlights, paved roads, sewage, and water services.[63] Unincorporated communities are not part of a city.[64] Rather, a single tier of local government serves them: the county.[65]

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[57] Pannu, *supra* note 17, at 261.
[58] *Local Governments and Public School Systems by Type and State*, U.S. CENSUS OF GOVERNMENTS (APRIL 27, 2015), https://www.census.gov/govs/cog/GovOrgTab03ss.html (last visited April 27, 2015).
[59] *Id.*
[60] CAL. WATER CODE § 20500 (Deering 2011).
[61] *See e.g.,* U. N. DEV. PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT 2006- BEYOND SCARCITY: POWER, POVERTY, AND THE GLOBAL WATER CRISIS 78 (2006).
[62] Pannu, *supra* note 17, at 260.
[63] Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 U.C.L.A. L. REV. 1095, 1106-12 (2008).
[64] Victor Rubin et al., *Unincorporated Communities in the San Joaquin Valley: New Reponses to Poverty, Inequity, and a System of Unresponsive Governance,* CALIFORNIA RURAL LEGAL ASSISTANCE & POLICY LINK, 5 (Nov. 27, 2007), *available at* http://www.prrac.org/projects/fair_housing_commission/los_angeles/Colonias_CRLA_%20PolicyLink%20Framing%20Paper.pdf.

Unlike municipalities, counties are responsible for approving land uses and providing necessary services. Counties also make decisions regarding the eligibility and feasibility of annexation.[66] However, they are not adequately equipped to serve the needs of rural unincorporated communities.[67]

One barrier to meaningful political participation, faced by residents of unincorporated communities, is vote dilution within geographically dispersed and densely populated county governments whose elected officials are accountable to both incorporated and unincorporated constituents.[68] In *Avery v. Midland County,* the Supreme Court applied the one-person, one-vote rule to county government.[69] As a result, municipal residents receive the same vote as residents of unincorporated communities, effectively diluting the vote of unincorporated community members in comparison to residents of more populated municipalities.[70]

Rural unincorporated communities are excluded from California state agency governance. In California, directors of statewide water management agencies are appointed by the governor and confirmed by the state senate.[71] Appointments are routinely confirmed and board members and agency heads are rarely removed from office.[72] Thus, accountability mechanisms over agency actions necessarily involve legislative or gubernatorial action.[73] However, the cost of traveling to lobby the state legislature and gathering enough votes to support a policy initiative is especially prohibitive for rural citizens who lack centralized populations to support traditional community organizing strategies and lobbying resources.[74] Allowing the governor to

[65] Peter DeMarco, Assessing the Impact of Dairies on the Drinking Water of Disadvantaged Communities in the San Joaquin Valley 4 (June 2014), *available at* http://www.waterboards.ca.gov/centralvalley/water_issues/dairies/library/demarco_capstone_rpt.pdf.
[66] Anderson, *supra* note 63, at 1114.
[67] *See id.* at 1115.
[68] Anderson, *supra* note 63, at 1156.
[69] *Avery v. Midland County, Tex.*, 390 U.S. 474,476 (1968).
[70] Anderson, *supra* note 63, at 1142.
[71] *Id.*
[72] Pannu, *supra* note 17, at 248.
[73] *Id*. at 250.
[74] *Id*.

appoint directors of state agencies charged with water resources management allows the interests of influential donors and powerful lobbying groups to prevail in contrast to established state water policy.[75]

Challenges to safe water access for rural unincorporated communities exist where there are issues surrounding poverty, rurality, and racial politics. Unincorporated communities are predominantly communities of color that have been structurally excluded from cities.[76] Since the 1900s, migrant farmworkers were drawn to the Central Valley with the prospect of industrial and agricultural jobs.[77] These communities formed along the outskirts of Central Valley cities, as they were excluded from living within city lines.[78]

The exclusion of low-income communities of color was reinforced by race-based segregation practices, ultimately creating unincorporated communities that exist in the Central Valley to this day.[79] County governments in the Valley have intentionally withheld important infrastructure services, including water services, to drive out unincorporated communities.[80] This practice of withholding services perpetuates infrastructure inequality and increases poverty.[81]

For residents of unincorporated rural communities, the discrepancy between the interests of urban and rural communities poses an additional barrier to meaningful political participation.[82] In light of this discrepancy, rural unincorporated communities face substantial challenges in obtaining county funds to build a new water system, as they are unable to compete with the larger economic interests of the county.[83] Unincorporated

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[75] *Id*.
[76] Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 107-08 (2010).
[77] Pheobe Seaton & Ilene J. Jacobs, *Advocating for Equity in California's Rural Communities,* RURAL VOICES, Winter 2009-10, at 15-16.
[78] Pannu, *supra* note 17, at 232.
[79] *Id.*
[80] TULARE CNTY. PLANNING DEP'T, TULARE COUNTY GENERAL PLAN (1971), Victor Rubin et al., *supra* note 64, at 2, 16, 18-19.
[81] Pannu, *supra* note 17, at 232.
[82] Anderson, *supra* note 63, at 1156.
[83] *Id.* at 1151.

communities face spatial barriers to political participation.[84] Counties are typically larger than cities, existing in random, fragmented jurisdictional pockets, making it difficult for rural residents to travel to attend county board meetings or legislative hearings outside their communities.[85] Due to these numerous barriers, unincorporated rural communities are effectively excluded from the political process, as urban county governments and large agricultural interests dictate the water policy discourse and decision-making processes.[86] To overcome these barriers, current structures of governance must be reformed with rural unincorporated community members' active involvement in the decision-making process.[87]

C. California's Recent Efforts to Improve Access to Clean Water For Disadvantaged Communities

Recently, California has enacted legislation to support state efforts to improve access to clean water for disadvantaged communities.

1. Assembly Bill 685: The Human Right to Water

In 2012, Governor Jerry Brown signed Assembly Bill 685 into law, recognizing access to clean water as a statutorily protected human right for the first time.[88] It states that, "every human being has the right to safe, clean affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."[89] AB 685 creates an ongoing duty for state agencies to consider the impact of their actions on the human right to water and identifies three factors- safety, affordability, and accessibility- to specifically consider when implementing policies, regulations, and grant criteria that are likely to impact water use.[90] The human right to water demands safe water that is free of disease-

[84] Pannu, *supra* note 17, at 250.
[85] *Id.*
[86] *Id.*
[87] Victor Rubin et al., *supra* note 64, at 5.
[88] BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK, *supra* note 2, at 2.
[89] CAL. WATER CODE § 106.3(a) (Deering 2015).
[90] *Id.* § 106.3(b).

causing contaminants and does not pose a threat to human health. Clean water should also be accessible, regardless of age or disability, and access should not be disproportionately burdensome. It should be affordable in that cost should not pose a barrier to access or compromise the ability to pay for other essential living expenses, such as food and housing.

AB 685 recognizes the importance of safe drinking water access and seeks to remove barriers to access for disadvantaged communities.[91] To fulfill this "duty to consider", agencies must give preference to and adopt policies or regulations that advance the human right to water, refrain from adopting policies or regulations that run contrary to the human right to water,[92] and note in the record the impact of their actions on securing safe drinking water access.[93] Furthermore, agencies should consider the human right to water when planning initiatives, developing approaches to public participation, providing public access to water quality, accessibility and affordability information, reporting agency actions impacting domestic water use, and determining loan and grant criteria for water infrastructure improvements.[94]

The Human Right to Water is not self-executing. AB 685 does not expand the state's obligation to provide water or expend additional resources beyond its existing obligations.[95] It does not explicitly impose duties on local governments or create a right of action.[96] This means that local communities must act to utilize accountability mechanisms to implement the human right to water.[97]

2. Proposition 1: The Water Bond

[91] BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK, *supra* note 2, at 10.
[92] *Id.* at 6.
[93] *Id.*
[94] *Id.*
[95] CAL. WATER CODE § 106.3(c) (Deering 2015).
[96] BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK, *supra* note 2, at 9.
[97] *Id.*

In November 2014, California voters passed Proposition 1, a $7.5 billion bond to fund water projects and programs statewide, pursuant to a comprehensive water plan.[98] The Bond specifically allocates $520 million to provide "clean, safe, reliable, and affordable drinking water to all Californians."[99] Funds are available to local governments, private water companies, mutual water companies, Indian tribes, and nonprofit organizations.[100]

Proposition 1 was intended in part to help disadvantaged communities[101] obtain clean water solutions. It allocates at least 9% of the total bond amount, or $696 million to disadvantaged and severely disadvantaged communities, a category that has not been used in previous bonds.[102] It requires that at least 10% of the $520 million clean water allocation to be spent for projects serving severely disadvantaged communities.[103] Proposition 1 allows for up to 15% of the $520 million to be used for technical assistance to help disadvantaged communities leverage funding opportunities and to administer a multidisciplinary technical assistance program for small and disadvantaged communities.[104]

Proposition 1 provides neither immediate nor long-term safe drinking water solutions. It provides funds to support drinking water system improvements for

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[98] *Community Water Center Supports Prop 1 Water Bond Fact Sheet,* CMTY. WATER CTR., https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/198/attachments/original/1414555738/CWC_Prop_One_Fact_Sheet.pdf?1414555738 (last visited Mar. 29, 2015).

[99] *See id.* and Cal Water Code § 79720 (Deering 2015). LEGISLATIVE ANALYST'S OFFICE, PROPOSITION 1-WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014, (Aug. 2014) [hereinafter LEGISLATIVE ANALYST'S OFFICE REPORT ON PROP. 1], http://www.lao.ca.gov/ballot/2014/prop-1-110414.pdf.

[100] LEGISLATIVE ANALYST'S OFFICE REPORT ON PROP. 1, *supra* note 100, at 4.

[101] CAL. WATER CODE § 79505.5 (Deering 2015) (Defining "disadvantaged" community as a community that has an annual median household income less than 80 percent of the statewide median.).

[102] PACIFIC INST., INSIGHTS INTO PROPOSITION 1: THE 2014 CALIFORNIA WATER BOND, 12 (Oct. 2014) [hereinafter PACIFIC INSTITUTE PROP. 1 REPORT] *available at* http://pacinst.org/wp-content/uploads/sites/21/2014/10/Insights-into-Prop-1-full-report.pdf.

[103] Cal. Water Code § 79725(b), § 79702 (v) (Deering 2015), Cal. Health & Safety Code § 116760.20(a)(13) (Deering 2015) (providing the definition for "severely disadvantaged community" as "a community with a median household income of less than 60 percent of the statewide average.").

[104] *Community Water Center Supports Prop 1 Water Bond Fact Sheet,* CMTY. WATER CTR., https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/198/attachments/original/1414555738/CWC_Prop_One_Fact_Sheet.pdf?1414555738 (last visited Mar. 29, 2015).

disadvantaged communities, but is limited in funds for ongoing operational and maintenance costs and technical assistance.[105] Disadvantaged communities do not have the financial capacity to operate complicated, expensive water systems, so some projects can be unaffordable in the long term.[106] Ultimately, Proposition 1's effectiveness will depend on how money is actually allocated and spent by state and local agencies receiving funds.[107]

3. The Sustainable Groundwater Managing Act (SGMA): A Shift Towards Local Governance and Control of Water Resources

In September 2014, Governor Brown signed the Sustainable Groundwater Managing Act (SGMA), a landmark piece of legislation that initiated the regulation of groundwater in California for the first time.[108] One of the SGMA's core principles is that groundwater should be managed locally.[109] SGMA's intent is for local agencies to develop and implement groundwater sustainability plans (GSP), giving local agencies the authority to manage groundwater sustainably and allowing the state to intervene only when necessary to protect groundwater sources.[110] The idea is to implement groundwater management plans tailored to the unique resources and needs of each community.[111]

In particular, SGMA requires local agencies overlying one of 127 groundwater basin, identified by SGMA as either high-priority or medium-priority, to form a

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[105] PACIFIC INSTITUTE PROP.1 REPORT *supra* note 102, at 13.
[106] *Id.*
[107] Peter H. Gleick, *What Does Proposition 1—the 2014 California Water Bond—Really Say?*, The HUFFINGTON POST, (Oct. 23, 2014), http://www.huffingtonpost.com/peter-h-gleick/what-does-proposition-1_b_6035462.html.
[108] Ian James, *Gov. Jerry Brown Signs Landmark Groundwater Legislation*, THE DESERT SUN, (Sept. 30, 2014), *available at* http://www.desertsun.com/story/news/environment/2014/09/16/california-groundwater-legislation/15725863/.
[109] Governor Brown's statement in his signing message recognizing that "a central feature of these bills is the recognition that groundwater management in California is best accomplished locally. *Governor's Signing Message,* GOV.CA.GOV, *available at* http://gov.ca.gov/docs/Groundwater_Signing_Message.pdf (last visited March 23, 2015).
[110] WATER EDUCATION FOUNDATION'S SGMA HANDBOOK, *supra* note 36, at 4.
[111] *Sustainable Groundwater Management Act: Frequently Asked Questions*, STATE OF CALIFORNIA, *available at* http://www.water.ca.gov/cagroundwater/faq.cfm (last visited April 14, 2015).

Groundwater Sustainability Agency (GSA) for each basin by June 30, 2017.[112] A "local agency" is a local public agency with water supply, management, or land use responsibilities for a groundwater basin. These 127 basins must adopt GSPs by 2020 or 2022, depending on whether the basin is in critical overdraft, after which GSAs will have 20 years to achieve groundwater sustainability.[113] These 127 basins account for 96% of the groundwater used in California, and most of them are in the Central Valley or along the Central and South Coast.[114]

A GSA is the agency primarily responsible for achieving groundwater sustainability by developing and implementing a GSP. For the most part, SGMA leaves it up to local interests to decide which local agencies to designate as a GSA and provides tools and authority to implement GSPs, including the authority to conduct investigations, determine a groundwater basin's sustainable yield, measure and limit extraction, impose groundwater management fees, and enforce terms of a GSP.[115] Once it is determined that a groundwater basin is subject to SGMA, all identified agencies within that basin should coordinate to determine the particular interests, concerns, and potential roles of each agency in groundwater management within a GSA.[116] Proposition 1 provides $100 million for grants to help prepare technical groundwater plans and implement groundwater management projects.[117] It is also important that all interested stakeholders and local agencies share existing information regarding their groundwater basin to develop a shared knowledge and understanding of the basin and its problems.[118]

SGMA also recognizes the need for state support of local groundwater management by providing technical support, financial resources, and exercising limited

[112] WATER EDUCATION FOUNDATION'S SGMA HANDBOOK, *supra* note 36, at 5.
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.* at 11.
[117] *Groundwater Legislation Implementation Fact Sheet,* U.C. DAVIS, *available at* http://groundwater.ucdavis.edu/files/203049.pdf (last visited April 30, 2015).
[118] WATER EDUCATION FOUNDATION'S SGMA HANDBOOK, *Supra* note 36, at 12.

authority, only when local agencies are unable to manage local groundwater issues.[119] In recognizing unique features of every groundwater basin, our solutions should also be uniquely tailored to each basin and the community it serves.[120] As such, it is imperative that local governments exercise leadership and work collaboratively towards local, sustainable groundwater use and management.[121]

D. Possible Solutions For Small Water Systems

According to the Governor's Report, the two prevailing issues for communities lacking access to safe drinking water are lack of funds for operational and maintenance costs and organizational challenges.[122] Small water systems are most vulnerable to drinking water challenges because they are unable to create economies of scale to make projects to improve and maintain adequate infrastructure.[123] Moreover, communities that lack the technical, managerial, and financial capacity to operate and maintain proposed water systems projects are ineligible for government funds.[124] Therefore, solutions should aim to increase institutional capacity of communities managing small water systems.

Because of the unique needs of each community, solutions should be individually tailored.[125] Possible solutions for small water systems to increase for clean water access include consolidation with large or neighboring smaller systems to build a larger ratepayer base to build necessary economies of scale, treating contaminated water sources, using surface water or other interim solutions such as bottled water or point-of-

[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] 2012 REPORT TO THE GOVERNOR'S OFFICE, *supra* note 24, at 6.
[123] Deb Martin, Rural Community Assistance Partnership, Affordability and Capability Issues of Small Water and Wastewater Systems: A Case for Regionalization of Small Systems 1, http://www.rcap.org/sites/default/files/rcap-files/Regionalization%20Great%20Lakes%20RCAP%20final.pdf (last visited April 11, 2015).
[124] Francis & Firestone, *supra* note 13, at 517.
[125] U.C. DAVIS NITRATE REPORT, *supra* note 5, at 5.

use treatment, building new wells, or combining contaminated wells with cleaner sources.[126]

II. MINDING THE GAP BETWEEN CALIFORNIA WATER LAW AND POLICY AND THE HARSH REALITIES OF CLEAN WATER CHALLENGES FACED BY DISADVANTAGED COMMUNITIES

As the previous section outlines, California has recently enacted legislation to facilitate clean water solutions for rural disadvantaged communities in furtherance of state policy measures to achieve universal clean water access. However, the lack of legal information, and the lack of access to legal information, creates barriers to effective local water resource management and funding. Minding the gap between California water law and policy to facilitate clean water solutions and the harsh realities of water challenges faced by disadvantaged communities is the first step towards achieving universal clean water access. However, communities will require legal assistance in order to achieve long-term solutions.

A. Lack of Information and Access to Information Undermines California's Efforts to Increase Clean Water Access

Unfortunately, lack of available legal information undermines California's efforts to increase safe water access for disadvantaged rural communities. Public access to current, comprehensive, and accurate information about water law and governance is essential to understanding and creating clean water solutions.[127] But, making information available is not enough. Information must also be accessible: conveyed in language that community members can understand, and distributed in formats that can be easily and conveniently accessed.

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[126] *Id.*
[127] BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK, *supra* note 2, at 9.

1. Lack of Available Legal Information and Assistance Tools

The lack of available legal information imposes barriers to compliance with water quality standards and legal requirements of local governance structures. One community member explains the lack of knowledge that is rooted in communities' inability to comply with legal requirements of local governance: "small communities get in trouble legally with the Brown Act, personnel and financial management and compliance. The majority of it stems from ignorance and lack of knowledge of the rules."[128]

The lack of compliance with water quality standards and legal requirements of local governance structures increases costs for disadvantaged communities. One community advocate explains how communities can get fined for failure to comply with the rules: "People have no idea how to comply. Mutuals are typically very poor and small, and regulations are costing them a lot of money."[129] Communities are also denied funding for the same reason: "We're finding more and more cases where counties are issuing permits to entities that are not legal, and we can't get funding until we become legal entities."[130]

The lack of legal information hinders public participation and accountability mechanisms. One community advocate explains how the lack of the necessary information hinders a community's ability to effectively manage water resources: "Lots of small systems don't know how to manage their boards and they don't know about their legal duties."[131]

Information about legal duties of local governing agents is important because it enables communities to meaningfully participate in making important decisions about

[128] Telephone interview with Sue Ruiz, Community Development Specialist, Self-Help Enterprises (Mar. 12, 2015).
[129] Telephone interview with Rural Community Assistance Corporation (RCAC) (Mar. 17, 2015).
[130] *Id.*
[131] *Id.*

water resource management that impact them.[132] One community advocate articulates how the lack of legal information hinders meaningful participation: "It's important to know the various roles of the people who are involved, so that consultants aren't the ones making the decisions. Oftentimes boards will go with what the engineers recommend because they feel like they don't understand enough." Understanding legal duties and obligations "is about making sure that people understand you're in charge. You're the one who needs to make the decisions because it is your community that's going to end up living with consequences of these decisions."[133] The lack of legal information inhibits the ability of communities to exercise local control over water resource management and increases the financial barriers to clean water solutions, despite the state's efforts to do the exact opposite.

2. Lack of Access to Legal Information

Even if legal information is available, it is not always easy to find or obtain. One advocate described the difficulty of finding legal resources: "The Water Board has a humongous library of resources, but they are really tough to find."[134] Another community water advocate described the difficulty of obtaining information: "Counties are not staffed to provide information to communities. Communities have to go get the information. That means making lots of phone calls and asking questions. The challenge is time."[135]

Oftentimes, information can be overwhelmingly complicated and technical. One community advocate describes the need for simple, reliable information: "The people running the small water systems are volunteers, regular people with day jobs, who aren't getting paid or trained. Your average person isn't comfortable reading about legal

[132] Alisha Deen et al., *Thirsty for Justice: A People's Blueprint for California Water*, ENVIRONMENTAL JUSTICE COALITION FOR WATER 69 (Aug. 5, 2005), *available at* http://www.issuelab.org/resource/thirsty_for_justice_a_peoples_blueprint_for_california_water.
[133] Telephone interview with Self-Help Enterprises (Mar. 17, 2015).
[134] Telephone interview with Sergio Carranza, Executive Director, Pueblo Unido Community Development Corporation (PUCDC) (Mar. 17, 2015).
[135] Telephone interview with Sue Ruiz, *supra* note 128.

solutions, so there's a huge need for reliable, straightforward information that isn't full of jargon."[136] Another advocate reiterates this concern: organizations "provide training sessions, but they're really geared for a more educated audience."[137]

Relevant information is oftentimes available only in English or online. Yet, California has the largest immigrant population in the country and more than 43% of Californians speak a language other than English at home.[138] Also, many communities do not have access to high speed internet, or lack the technical knowledge to navigate through websites. In light of these barriers to accessing legal information and assistance tools, communities will require legal assistance in order to achieve long-term clean water solutions.

B. Bridging the Gap: Information Availability and Access as a Platform for Community Empowerment and a Means to Effectuate California Water Law and Policy as Intended

The Environmental Justice (EJ) movement emerged out of the growing awareness of the inequitable distribution of environmental benefits and burdens, and that low-income communities of color disproportionately suffer from environmental harms.[139] It also recognizes that these communities are excluded from the decision-making process, as decisions with significant environmental consequences are made without any input from the communities who are impacted the most.[140]

Although the movement raises concerns about the environment, EJ activists view environmental issues "as only one part of the larger social issues of racism and cultural and economic justice."[141] For decades, this group has recognized that poor people lack

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[136] Telephone interview with Jessi Snyder, Community Development Specialist, Self-Help Enterprises (Mar. 5, 2015).
[137] Telephone interview with Sue Ruiz, *supra* note 128.
[138] BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK, *supra* note 2, at 9.
[139] Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and "Justice,"* 47 THE AM. U. L. REV. 221, 222 (1997).
[140] *See id.* at 221.
[141] *Id.* at 227. (*quoting* Eileen Guana, *Federal Environmental Citizen Provisions: Obstacles and Incentives on the Road to Environmental Justice,* 22 ECOLOGY L.Q. 1, 9 (1995)).

political and economic power and that certain factors, such as the exclusion of people of color from decision-making processes and bodies diminish communities' ability to challenge undesirable land uses, pollution, and other environmental harms.[142] Therefore, we should seek to rectify these disparities by increasing institutional capacity and empowering communities to participate meaningfully to facilitate safe drinking water access. In order to do so, communities will need legal information and assistance in working towards clean water systems specifically tailored to serve their unique needs.

1. Making Legal Information Available Increases Institutional Capacity

There is a growing consensus among state and local officials that "rural communities need regional solutions."[143] Communities and their water service providers must have the institutional capacity, technical, managerial, and financial capacity to maintain and operate affordable systems. Making information about funding opportunities and local governance structures available will increase institutional capacity. Furthermore, the accessibility of such information is necessary for community empowerment.

a. Information About Funding Opportunities

Despite the increasing availability of funds for disadvantaged communities, few have been able to navigate through the application process to obtain funds to improve infrastructure or consolidate with neighboring water systems.[144] One advocate describes the limitations of information of funding sources: "There is a universe of funding that might be available, but it's really hard for communities who don't have the bandwidth to

[142] Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law,* 19 ECOLOGY L.Q. 619, 628 (1992).
[143] Patricia Leigh Brown, *The Problem is Clear: The Water is Filthy*, THE N.Y. TIMES (Nov. 13, 2012), *available at* http://www.nytimes.com/2012/11/14/us/tainted-water-in-california-farmworker-communities.html?_r=0.
[144] *See* Mark Grossi, *Impoverished Rural Town of Monson Getting Water Filters*, THE FRESNO BEE, Sept. 16, 2012, *available at* http://www.fresnobee.com/news/state/california/water-and-drought/article19515468.html. *See also* 2013 SWRCB GROUNDWATER REPORT TO THE LEGISLATURE, *supra* note 10, at 90.

access that funding, and there's a limit to how simplified that information can be."[145] Organizations should take steps to help small unincorporated communities better navigate agency funding opportunities.[146]

b. Information About Local Governance Structures

Information about local governance structures increases technical and managerial capacity. Because of barriers to funding and the fragmentation of local government authority, unincorporated communities will require solutions that vary depending on different structural characteristics and political circumstances. Information about legal entities is important because it "mak[es] people understand you're in charge, that you're the one who needs to make decisions; because communities are the ones who will end up living with their decisions, it's important that community members are the ones making decisions."[147]

2. Information Accessibility is a Platform for Community Empowerment

Communities must have the political influence to hold decision makers accountable. Accountability between decision makers and impacted community residents is fundamental for achieving long term, sustainable solutions for safe water access.[148] Public participation requires transparency and access to information about agency responsibilities and initiatives.[149] Informing citizens of their rights, responsibilities, and options is an important first step towards meaningful public participation.[150] Without community power, financial investments in water infrastructure are granted to those with more political influence, and the people most politically and economically marginalized are left without the institutional capacity to maintain effective and affordable

[145] Telephone interview with Pearl Kan, Equal Justice Works Fellow, Community Rural Legal Assistance (CRLA) (Mar. 6, 2015).
[146] BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK, *supra* note 2, at 6.
[147] Telephone interview with Rural Community Assistance Corporation (RCAC), *supra* note 133.
[148] Francis & Firestone, *supra* note 13, at 521.
[149] BERKELEY HUMAN RIGHT TO WATER IMPLEMENTATION FRAMEWORK, *supra* note 2, at 9.
[150] Sherry R. Arnstein, A Ladder of Citizen Participation, Journal of the American Planning Association (July 1969) 216, 219, *available at* https://www.planning.org/pas/memo/2007/mar/pdf/JAPA35No4.pdf.

operations.[151] However, small, disadvantaged communities need additional support to access available funding and other resources.[152] Collaboration among diverse communities and direct and ongoing community involvement in advocacy efforts empowers communities.

a. Collaboration Amongst Affected Communities and Various Stakeholders

Continued collaboration amongst diverse stakeholder groups and state agencies is needed to support sustainable drinking water solutions for disadvantaged, unincorporated communities.[153] Communities should coordinate their efforts to create a collective power to tackle larger problems with communities facing similar drinking water challenges.[154]

Community advocates have recommended a variety of ways to increase information accessibility. One advocate suggested narratives and anecdotes as a good way for communities to share experiential knowledge with other similarly situated communities, "to inspire creative solutions."[155] As one community advocate put it: "Stories create hope. A lot of people will say that this has never been done before. A write up of a community that has done just that shows that this actually happened and it can be done."[156] Another advocate explains why community narratives can be ideal: "Because each community is very idiosyncratic, the best way is to lead by example."[157]

b. Direct and Ongoing Community Involvement By Community-Based Organizations

Direct community involvement by community-based organizations is necessary to ensure safe water access.[158] To hold decision makers accountable and take action towards

[151] Francis & Firestone, *supra* note 13, at 518-19.
[152] 2012 REPORT TO THE GOVERNOR'S OFFICE, *supra* note 24, at 7.
[153] *Id.* at 8.
[154] Francis & Firestone, *supra* note 13, at 525.
[155] Telephone interview with Pearl Kan, *supra* note 147.
[156] Telephone interview with Self-Help Enterprises, *supra* note 133.
[157] Telephone interview with Pearl Kan, *supra* note 147.
[158] Francis & Firestone, *supra* note 13, at 522.

long-term solutions, community organizations need to educate communities on how to navigate water governance systems.[159] Community Water Center's mission "to achieve community-driven water solutions through organizing, education, and advocacy in California's San Joaquin Valley," reflects this idea of direct and ongoing community involvement.[160]

Organizations need to build ongoing relationships with the communities they serve and help them use resources and information to facilitate action towards implementing long-term solutions.[161] One community water advocate reflects this sentiment: "There needs to be a mechanism that goes out to the community at their location, at their site, on a continual basis . . . build the relationship, build the trust so that all the beautiful resources can actually make the connection to the need."[162]

III. CONCLUSION

Proposition 1 provides up to $25 million for multi-disciplinary technical assistance program under the State Water Board's drinking water and wastewater funding program.[163] In addition to legal assistance, it is equally important to emphasize the importance of providing technical assistance to implement water projects and manage small community water systems.[164] Both legal and technical assistance should be included as part of an integrated vision to find viable solutions for drinking water.[165]

This new technical assistance program can potentially fund clinics and other legal services programs to provide legal assistance to small, disadvantaged communities for

[159] *Id.* at 524.
[160] *Id.* at 522.
[161] *Id.*
[162] Telephone interview with Sue Ruiz, *supra* note 129.
[163] *Proposition 1- The Water Bond- Fact Sheet,* THE BAY INSTITUTE, thebayinstitute.org/page/detail/8208 (last visited May 13, 2015).
[164] Email from Sergio Carranza, dated 8/17/15
[165] Email from Sergio Carranza, dated 8/17/15

drinking water solutions.[166] Technical legal assistance may include transactional work, local policy work, agency work, and negotiating for small water systems to consolidate.[167] Technical assistance would be provided with an eye toward practical, long-term solutions, specifically tailored to adequately and effectively serve communities with unique safe drinking needs.[168]

[166] Scoping Paper: A King Hall Environmental Justice Clinic on Small Disadvantaged Community Water System Assistance (Mar. 15, 2015) (on file with author). This new technical assistance program can potentially fund a new U.C. King Hall environmental justice clinic to provide legal assistance to small disadvantaged communities for drinking water solutions. The King Hall Water Clinic would be rooted in and responsive to community needs. U.C. Davis's King Hall is the only law school in the UC system that is geographically situated in relative proximity to the Central Valley- the heart of California's agricultural economy. The clinical program would also collaborate with well-established community-based organizations such as Community Water Center (CWC). King Hall is also home to the California Environmental Law & Policy Center (CEPLC), which is engaged in interdisciplinary environmental research and policy initiatives across the UC Davis campus. King Hall's existing partnerships and resources will allow for continued engagement and collaboration, making it an ideal place to invest state allocated funds to implement a clean water clinic.

[167] *Id.*

[168] *Id.*