

**IMPLEMENTING THE HUMAN RIGHT TO WATER IN  
CALIFORNIA'S CENTRAL VALLEY: BUILDING A  
DEMOCRATIC VOICE THROUGH COMMUNITY  
ENGAGEMENT IN WATER POLICY DECISION MAKING**

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The agricultural sector is a cornerstone of California's economic strength, producing \$39 billion worth of goods and services each year and occupying more than a quarter of the state's landmass.<sup>3</sup> The vast majority of these farming receipts come from the Central Valley, which possesses some of the most fertile farmland in the world and produces a literal cornucopia of citrus, strawberries, grapes, lettuce, almonds, and milk, just to name a



groundwater provides up to 95% of the domestic supply.<sup>9</sup> Not every inch of the Valley floor rests on polluted aquifers—these contaminants move in plumes as a complex function of hydrogeology and human activity—but a significant percentage of Valley residents are paying the price for degradation of this resource.<sup>10</sup> This burdensome distinction rests disproportionately on low-income communities of color.<sup>11</sup>

Historical settlement patterns stemming from farm labor migration, lack of public transportation, racially exclusionary covenants, and discriminatory planning and public investment policies, among other factors, have resulted in a persistent and widespread pattern of small, under-resourced and under-served communities of color in rural, unincorporated areas of the Valley.<sup>12</sup>

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9. Social Disparities, *supra* note 7, at 5; CWC Nitrate White Paper, *supra*



significant negative environmental justice implications.

## II. THE RELATIONSHIP BETWEEN ENVIRONMENTAL JUSTICE AND HUMAN RIGHTS

Environmental justice is the prevailing or accepted term for describing the disproportionate impacts that environmental pollution has on the health and well-being of low-income communities and communities of color as compared with other populations.<sup>16</sup> Accordingly, environmental justice communities are those “communities bearing the greatest share of environmental and social problems associated with polluting industries.”<sup>17</sup>

This is evident in the Central Valley, where many rural, low-income, largely Latino communities are both “disproportionately affected by exposure to drinking water contaminants”<sup>18</sup> and bear “a disproportionate burden of environmental health risks from other sources.”<sup>19</sup> These risks include air pollution created by routine spraying of pesticides on the crops near their homes and occupational hazards from laboring in the farms directly where these chemicals are applied.<sup>20</sup>

From the perspective of the global water justice movement, groundwater contamination in the Central Valley’s rural, low-

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16. David Monsma,

income communities constitutes a human rights abuse.<sup>21</sup> Human rights are “the basic standards without which people cannot live in dignity as human beings,”<sup>22</sup> and are premised on the philosophy that there exists a “fundamental nucleus of values” around which “different cultures, juridical expressions and institutional models” converge.<sup>23</sup> There is growing acknowledgment in international law and policy circles of the existence of a human right to water, despite the fact that it is not (yet) codified explicitly in any treaties.<sup>24</sup> The water justice movement draws on both

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21. See Maude Barlow, *Advice for Water Warriors*, YES! MAGAZINE ONLINE, Nov. 8, 2008, available at <http://www.yesmagazine.org/planet/advice-for-water-warriors>. In fact, when the U.N. Independent Expert on the right to water and sanitation conducted her recent fact-finding mission to the United States in early March 2011 “to examine the way in which the human right to water . . . is being realized in the United States[,]” she visited the Central Valley during her tour and met with and listened to the drinking water challenges being faced by residents from local communities. Press Release, United Nations Human Rights, Catarina de Albuquerque, U.N. Independent Expert on the right to water and sanitation, Mission to the United States of America from 22 February to 4 March 2011, (Mar. 4 2011) [hereinafter Independent Expert End-of-Mission Press Release], available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E>. Although her formal report to the United Nations is still forthcoming at the time of publication, the press release issued at the immediate conclusion of her mission expresses concerns about racially and socioeconomically discriminatory impact, water quality, and affordability in this region. See *id.*; see also Mark Grossi, *Tulare Co. water draws UN critique*, FRESNO BEE, Mar. 5, 2011, at A3, available at <http://www.fresnobee.com/2011/03/04/2297039/tulare-county-water-draws-un-critique.html#storylink=misearch>; Mark Grossi, *U.N. studies Tulare Co. town's tainted water: International attention to be focused on Valley town's water woes*, FRESNO BEE, Mar. 1, 2011, available at <http://www.fresnobee.com/2011/03/01/2292513/sevilles-water-probed-by-un.html#storylink=misearch>; Mike Hazelwood, *U.N. expert told of Seville water issues: Official studying water rights around world*, VISALIA TIMES-DELTA, Mar. 2, 2011, at A1, available at <http://www.visaliatimesdelta.com/apps/pbcs.dll/article?AID=2011103020317>.

22. Dinara Ziganshina, *Rethinking the Concept of the Human Right to Water*, 6 SANTA CLARA J. INT'L L. 113, 117 (2008) (internal quotation marks and alterations omitted).

23. See Mary Ann Glendon, *Justice and Human Rights: Reflections on the Address of Pope Benedict to the UN*, 19 EUR. J. INT'L L. 925, 925-26 (2008) (quotation marks omitted).

24. See 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*, 29th Sess., Nov. 29, 2002, U.N. Doc. E/C.12/2002/11 (2002) [hereinafter G.C. 15]; U.N. HUMAN RIGHTS COUNCIL (H.R.C.), OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (O.H.C.H.R.), REPORT BY THE OFFICE OF THE HIGH COMMISSIONER ON THE SCOPE AND CONTENT OF THE RELEVANT HUMAN RIGHTS OBLIGATIONS RELATED TO EQUITABLE ACCESS TO SAFE DRINKING WATER AND SANITATION UNDER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, U.N. Doc. A/HRC/6/3 (Aug. 2007) [hereinafter OHCHR Rep.]; G.A. Res. 64/292, ¶ 1, U.N. Doc. A/RES/64/292 (July 28, 2010) [hereinafter G.A. Res.]; U.N. Hum. Rts. Council Res. 15/9, ¶ 3, U.N. Doc. A/HRC/RES/15/9 (Sept. 30, 2010) [hereinafter H.R.C. Res. 15/9]; U.N. Hum. Rts. Council Res. 16/L.4, ¶ 1, U.N. Doc. A/HRC/RES/16/L.4 (Mar. 18, 2011) [hereinafter H.R.C. Res. 16/L.4].

environmental justice and human rights as conceptual tools in the struggle to achieve universal access to safe drinking water, but it is worth noting that the two concepts are analytically distinct. The human right to water refers to a substantive right to the underlying environmental resource and this universal right extends to all people by virtue of being human whereas environmental justice refers to disproportionate environmental impact on a discrete population group.<sup>25</sup> This impact could take the form of the imposition of an environmental burden, such as inequitable exposure to *unsafe* drinking water, or the deprivation of an environmental benefit, such as inequitable access to a sufficient *quantity* of drinking water.<sup>26</sup> In the discourse of water justice practitioners, however, environmental injustice and environmental human rights violations converge, because it is politically marginalized populations around the world who overwhelmingly



2011] *HUMAN RIGHT TO WATER IN CALIFORNIA* 503

around the planet who are not fully realizing their human right to water are largely the world's environmental justice communities.<sup>28</sup>

*A. The Human Right to Water in International Law*

*1. A Human Right to High-Quality Water*

As most recently articulated in a July 2010 resolution by the United Nations (U.N.) General Assembly, there is a human right to water recognized in international law, and it consists of “the right to *safe and clean* drinking water and sanitation that is essential for the full enjoyment of life and all [other] human rights[.]”<sup>29</sup> One of the contours of this human right to water is that it encompasses not just quantity, but also quality.<sup>30</sup> “Providing low-quality water would vitiate the fundamental rationale that undergirds the right to water[.]” as “[a]ny quantity of water is meaningless if its quality causes it to be unfit for use or consumption.”<sup>31</sup> Both logic and developing international law support this proposition. The U.N. Human Rights Council (HRC) has issued a subsequent resolution

“affirm[ing]” that the human right to water is, among other things, “inextricably related to the right to the highest attainable standard of physical and mental health . . . .”<sup>32</sup> As Professor Erik Bleumel once observed:

[T]he right to health . . . requires the assurance of environmental hygiene. In turn, ensuring environmental hygiene requires States to ‘prevent threats to health from unsafe and *toxic water conditions*,’ including protection of water resources from contamination . . . . The right to health thus ensures not only access to clean and safe water to drink, but also . . . *the protection of existing bodies of water from contamination*.<sup>33</sup>

Along a similar vein, General Comment No. 15, issued by the U.N. Committee on Economic, Social, and Cultural Rights (ECOSOC), includes a significant water quality component.<sup>34</sup> This 2002 document was “the first recognition by a United Nations human rights body of an independent and generally applicable human right to water.”<sup>35</sup> It interprets the human right to water as imposing an obligation on states

including “adopting the necessary and effective legislative and other measures to restrain[] . . . third parties from . . . polluting . . . water resources[,]”<sup>36</sup> and it encourages States to adopt strategies and programs “to ensure that there is sufficient and *safe* water for present and future generations[,]” such as by “reducing and eliminating contamination of watersheds . . . by substances such as . . . harmful chemicals . . . .”<sup>37</sup>

Unsafe levels of industrial pollution, including agricultural pollution, leave water resources “unfit for direct human consumption and use.”<sup>38</sup> The human right to water thus, at least in theory, requires States to address “the dilemma between industrial development and water quality[,]” because the right entails “adequate supplies of *safe* water[,]” thereby obligating governments “not only to ensure access to water, but also to enact environmental regulations to protect the water supply.”<sup>39</sup> Setting aside for the moment the question of whether there is in fact an *enforceable* international human right to water, and assuming that these instruments are authoritative interpretations of this right,

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36. U.N. Committee on Economic, Social, and Cultural Rights’ General Comment No. 15, ¶ 23 (2002). *See also* Bluemel, *supra* note 30, at 973 (explaining that the “[o]bligation[] to protect the right to water[,]” which is a component of an international human right to water,

ongoing agricultural contamination of Central Valley aquifers clearly rises to the level of a human rights violation, as the plethora of acutely toxic and carcinogenic contaminants in the public drinking water supply, including nitrates and pesticides, pose both short-term and long-term threats to public health.<sup>40</sup> The fact that this health risk falls disproportionately on economically, socially, and politically marginalized communities makes the violation that much more egregious.<sup>41</sup> If the human right to water establishes a

international human rights law loses steam.<sup>43</sup> “While rights do not theoretically depend on states for their existence, states bind themselves to protect these rights internationally through treaty and custom.”<sup>44</sup> It is this latter step that gives legal teeth to a human right, making it enforceable by the individual against the State in an international forum.

Thus far, no States have agreed to bind themselves to an explicit and independent right to water in an international treaty. In the last decade, there has been a surge of non-binding “soft law” instruments articulating the existence of this right,<sup>45</sup> beginning with ECOSOC’s General Comment No. 15 in 2002.<sup>46</sup> This was followed by a report released by the Office of the High Commissioner for Human Rights in 2007,<sup>47</sup> and then a resolution by the HRC establishing an independent expert to investigate the implementation of this right within U.N. member States in 2008.<sup>48</sup> These actions have culminated in the recent 2010 resolutions by the General Assembly and the HRC, respectively, formally declaring the existence of a human right to water.<sup>49</sup> Specifically,

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43. See, e.g., Hardberger, *supra* note 30, at 535 (noting that as a nature of being a *right*, if there is a human right to water, “someone must be entitled to demand water, and someone must be obligated to provide it.”); Schorn, *supra* note 27, at 126 (“If a right exists, then individuals have standing to assert a claim. If they can assert a claim, then someone, presumably the state, has the responsibility or obligation to respond to and meet that claim.”).

44. McGraw, *supra* note 34, at 41.

45. *Id.* at 43.

46. G.C. 15, *supra* note 24.

47. OHCHR Report, *supra* note 24.

48. U.N. Hum. Rts. Council Res. 7/22, ¶¶ 2-4, U.N. Doc. A/HRC/RES/7/22 (Mar. 20, 2008) [hereinafter H.R.C. Res. 7/22], available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_22.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_22.pdf).

49. G.A. Res., *supra* note 24; H.R.C. Res. 15/9, *supra* note 24. See also H.R.C. Res. 16/L.4, *supra* note 24, at ¶ 1 (welcoming the recognition of this right in the foregoing resolutions). We leave for others to debate whether these developments amount to the full-fledged development of customary international law. Compare, e.g.,

the General Assembly resolution:

1. Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights;
2. Calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all;
3. Welcomes the decision by the Human Rights Council to request that the independent expert on human rights obligations related to access to safe drinking water and sanitation submit an annual report to the General Assembly, and encourages her to continue working on all aspects of her mandate . . . .<sup>50</sup>

It bears noting, however, that the General Assembly constitutes a forum for international dialogue, not a legislative organ, and the 2010 resolution does not carry the force of law with respect to U.N. . . .

legal right.”<sup>52</sup> To the extent that this resolution “interprets pre-existing substantive international norms, it may be helpful for understanding and applying them[,]”<sup>53</sup> and, to the extent that it “restates existing international norms, it may have an evidentiary value for establishing these.”<sup>54</sup> As international lawyer and scholar Marko Divac Öberg observes, however, the resolution does not of its own force “have any [formal] impact on the state of the law.”<sup>55</sup>

Nevertheless, “[i]n practice it can be hard to draw the line between what, on the one hand, is merely interpretative or declaratory and what, on the other hand, is truly creative.”<sup>56</sup> This tension is illustrated by the interplay between the recent resolutions adopted by the General Assembly and the HRC.<sup>57</sup> The General Assembly resolution does not specify whether the human right to water is an independent right that has yet to be codified or merely a dependent right flowing “by necessary implication” from other preexisting and pre-codified international human rights.<sup>58</sup> Following quickly on its heels, however, the HRC resolution provides a seeming clarification, describing the right to water as a dependent right “derived from” and “inextricably related to” specific international human rights codified in two separate and binding international treaties; namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Cultural, and Social Rights (ICESCR).<sup>59</sup>

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52. See Lani Guinier, *Courting the People: Demosprudence and the Law/Politics Divide*, 89 B.U. L. REV. 539, 557 (2009); Kerwin, *supra* note 51, at 880; Bilder, *supra* note 49, at 674. See also Peter H. Gleick, *The Human Right to Water (and Sanitation)*, THE HUFFINGTON POST (Aug. 4, 2010), [http://www.huffingtonpost.com/peter-h-gleick/the-human-right-to-water\\_b\\_671175.html](http://www.huffingtonpost.com/peter-h-gleick/the-human-right-to-water_b_671175.html) (“[T]he purpose of UN resolutions and interpretations is to expand informal interpretations of international law, as appropriate.”).

Much scholarly attention will undoubtedly be given in the coming years to the enforceability of the human right to water and the enforcement implications of the HRC having placed a foot in each camp, since the obligations created by positioning the right to water within the ICESCR are “much softer and more attenuated” than those created by positioning the right within the ICCPR.<sup>60</sup> To the extent that a domestic or international court of law accepts the HRC’s assertion that the right to water derives from these preexisting treaties, and thus accepts the right’s immediate *enforceability* against U.N. member States, it would nevertheless appear that pursuant to either treaty, *enforcement* of the right may be subject to a State’s resource constraints.<sup>61</sup> This is where we suspect international litigation is most likely to hit a wall, for very few courts are willing to delve into such fundamentally political questions as to how the legislative and executive branches of government choose to allocate limited resources.<sup>62</sup>

For this reason, we do not believe that litigating the human right to water is the most effective tool available for achieving its full implementation, in practice and on the ground. Environmental justice communities “must be given the tools to redress violations of their human dignity in *the most direct and effective way possible*.”<sup>63</sup> It is not clear to us that international litigation of the human right to water in various international judicial tribunals and commissions fits this definition.<sup>64</sup> This is in part based on our

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the right to water and sanitation legally binding (Oct. 1, 2010) (interpreting the H.R.C.’s follow-up resolution as “clos[ing] the gap” left by the G.A. resolution by making the right to water and sanitation “justiciable and enforceable”) (quoting U.N. Independent Expert Catarina de Albuquerque), *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10403&LangID=E>.

60. See McCaffrey & Neville, *supra* note 35, at 683.

61. See Glick, *supra* note 32, at 100; Bluemel, *supra* note 30, at 976; Fitzmaurice, *supra* note 30, at 549-50; McCaffrey & Neville, *supra* note 35, at 683; McCaffrey, *supra* note 38 at 13.

62. See Mazibuko, et al. v. City of Johannesburg, et. al. 2010 (3) BCLR 239 (CC) (S. Afr.) (ruling on the South African domestic constitutional provision conferring a right to water and holding that determinations regarding a minimum sufficient daily quantity of water in satisfaction of this right implicate budgetary allocations and are thus best left to the legislative and executive branches of government, both for institutional and democratic reasons), *available at* <http://www.saflii.org/za/cases/ZACC/2009/28.html>; See also Rose Francis, *Water Justice in South Africa: Natural Resources Policy at the Intersection of Human Rights, Economics, and Political Power*, 18 GEO. INT’L ENVTL. L. REV. 149, 191-92, 195 (2005).

63. McGraw, *supra* note 34, at 49 (emphasis added).

64. See McCaffrey & Neville, *supra* note 35, at 680 (“[W]ithout the development of financial and institutional capacity to provide water services, the right to water is of only





to water does exist, in our collective hearts and minds, if not yet in the halls of domestic and international courts and legislatures.

2011] *HUMAN RIGHT TO WATER IN CALIFORNIA* 513

representatives in the California legislature to pass a bill that would have codified the existence of a human right to water in this state.

*1. Physical Infrastructure*

First, a community water system must have adequate physical infrastructure, such as wells, pipes, storage tanks, treatment facilities, and water service delivery technology, all of which

2011] *HUMAN RIGHT TO WATER IN CALIFORNIA*

Yet, particularly when consumers have no idea where the water out of their tap comes from, it is easy for regulatory agencies to cave to pressure from powerful political lobbies and fail to set requirements or guidelines for protection of those sources. While communities can engage in local voluntary efforts like wellhead protection programs,<sup>82</sup> for the most part individual community water systems do not have authority to set requirements or restrictions on potentially harmful land uses and activities affecting

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HAZARD ASSESSMENT, PUBLIC HEALTH GOALS FOR CHEMICALS IN DRINKING WATER, 1,2,3-TRICHLOROPROPANE, 1, 3, 31, 33 (Aug. 2009), *available at* [http://www.oehha.ca.gov/water/phg/pdf/082009TCP\\_phg.pdf](http://www.oehha.ca.gov/water/phg/pdf/082009TCP_phg.pdf); California State Water Resources Control Board, Division of Water Quality, GAMA Program, Groundwater Information Sheet, 1,2,3-Trichloropropane (TCP), 3-5 (Nov. 17, 2009), *available at* [http://www.swrcb.ca.gov/water\\_issues/programs/gama/docs/coc\\_tcp123.pdf](http://www.swrcb.ca.gov/water_issues/programs/gama/docs/coc_tcp123.pdf); U.S. Department of Health & Human Services, Public Health Service, National Toxicology Program, Report on Carcinogens, Eleventh Addition, 1 (2005), *available at* <http://ntp.niehs.nih.gov/ntp/roc/toc11.html> (hyperlinking to chapter on TCP), *available at* <http://ntp.niehs.nih.gov/ntp/roc/eleventh/profile>

WLR 47-3 FIRESTONE

capacity boils down to a water provider's ability to keep the water system running safely and efficiently. This includes the ability to conduct planning studies for system upgrades and the ability to apply for available grants and loans, which are frequently necessary because revenues from water service provision to small, low-income communities often will not cover the cost of improvements due to lack of economies of scale.<sup>88</sup> It also means being able to develop rate structures that are affordable and budgets that cover the costs of ongoing operation and maintenance while building cash reserves.<sup>89</sup> For small, low-income communities, it is often extremely difficult to address this component without creating joint operation, management and funding mechanisms with neighboring communities and municipalities. In the long term, this may lead to full consolidation into a larger system that can benefit from an increased economy of scale.<sup>90</sup>

#### *4. Community Power*



2011] *HUMAN RIGHT TO WATER IN CALIFORNIA* 519

communities that need it most.<sup>92</sup> Regulatory agencies charged with protecting water resources prioritize the interests of industries and leave the least powerful to bear the costs of ensuing pollution. The most politically and economically marginalized California

injustice.<sup>97</sup> For this reason, we do not believe that drilling wells or donating money to charity alone will solve drinking water disparities in the Central Valley, let alone the world.<sup>98</sup> The root cause—lack of sociopolitical influence—is central to the solution. Unquestionably, money and physical infrastructure are necessary, but they are not sufficient, and the current, widespread myopic focus on supply side strategies may actually undermine the most important component of community power, and with it, sustainability.<sup>99</sup> Unfortunately, the General Assembly's recent resolution declaring the existence of a human right to water does not skirt this tension carefully, as it explicitly encourages rich countries to donate money and technology to poor countries in furtherance of fulfilling the human right to water, while simultaneously failing to emphasize the importance of involving, engaging, or empowering the very people who are affected by the

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97. See Cole, *supra* note 64, at xv (“[O]ne of the roots of environmental justice” is “the making of decisions by people not affected by those decisions”); Torres, *supra* note 28, at 606 (discussing environmental justice lawyer and scholar Luke Cole’s theory that “[t]he ‘mal-distribution of environmental burd79 Tdu9he root

implementation decisions those resources may facilitate.<sup>100</sup>

CWC believes that developing true sociopolitical accountability between impacted residents and decision makers is the only means of achieving *sustainable* change in the communities with which we partner, because eventually donor funds dry up, trained operators move on to better-paying jobs, and there is always pressure on government by some percentage of the private sector to loosen source water protections for private material gain. Thus, unlike the first three components of a human right to water, this last one requires continued vigilance from within; it cannot be donated or imposed.<sup>101</sup> Ultimately, therefore, the human right to water is not an end goal that can be achieved and set aside as a mission accomplished. Rather, it is an ongoing process—a process in which disadvantaged communities that are perpetually at the risky end of the water service delivery pipe must remain engaged in order to carve out a permanent seat at the decision making table next to industry lobbyists, engineers, and public officials.<sup>102</sup>

### C. Community Empowerment Through Direct Engagement

If environmental justice communities exist in large part because of the socioeconomic and political marginalization of their

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100. See generally G.A. Res., *supra* note 24. It bears noting that the H.R.C.'s subsequent resolution goes a long way toward filling this gap, encouraging U.N. member States "[t]o ensure full transparency of the planning and implementation process in the provision of safe drinking water and sanitation and the active, free and meaningful participation of the concerned local communities and relevant stakeholders therein[.]" and "[t]o pay particular attention to persons belonging to vulnerable and marginalized groups, including by respecting the principles of non-discrimination and gender equality[.]" H.R.C. Res. 15/9, *supra* note 24, at ¶ 8(b), (c). CWC hopes that should U.N. member States develop a formal treaty codifying the human right to water, such instrument will incorporate the H.R.C.'s participatory provisions.

101. Guinier, *supra* note 52, at 551 ("[S]ocial change is only sustainable if it succeeds in changing cultural norms, is institutionalized through policy decisions and the oversight of administrative actors, and develops an internal and external constituency of accountability.") (emphasis added).

102. See The Honorable Cruz Reynoso, *Foreword* to Paola Ramos, Latino Issues Forum, Promoting Quality, Equity, and Latino Leadership in California Water Policy: An Introduction to Water Issues Impacting Latino Communities in California 6 (June 2003) ("Overcoming California's water challenges will undoubtedly require a change in how water policies are made and who is making them. As Latinos, we will have to take our place at the table."); *Thirsty for Justice*, *supra* note 6, at 61 ("Without a place at the table, low-income communities and communities of color are denied access to important decision-making opportunities that affect their water supplies, the regulations that protect water quality and quantity, and sources of funding to improve local water infrastructure.").



2011] *HUMAN RIGHT TO WATER IN CALIFORNIA* 523

other actors besides the community residents themselves; usually, the target audience appears to be benevolent government officials.<sup>107</sup> CWC believes that some of the focus should shift to civil society, and specifically, the communities themselves.<sup>108</sup> We posit that, at least here in the Central Valley, impacted communities already possess the power to inject themselves into decision making processes, to asse

*D. CWC's Approach to Community Empowerment in the Central Valley*

*1. The Foundation: Education and Engagement with Impacted Residents*

Building political power must start with an individual resident in an individual community. Therefore, CWC first and foremost grounds its work directly in local communities that currently lack access to safe, affordable drinking water, providing outreach and education to increase local understanding of drinking water challenges.<sup>110</sup> Many community residents are drawn in to community-based activism by drinking water because it directly

2011]

526





below to acknowledge the complexity of this work and to underscore that although there are some guiding principles, there is not just one correct model for community engagement and community empowerment.

*a. A Delicate Balance Between Voice and Representation*

Within CWC's work, the AGUA coalition is the primary vehicle for connecting residents from impacted communities with regulatory officials and policy makers, and its coordination is, in many ways, the single-most important function that CWC serves. The communities AGUA members represent "have for too long been denied a voice" in policy decisions affecting drinking water quality in the Central Valley.<sup>119</sup> "One of the central tenets of the [environmental justice] movement is 'We speak for ourselves.'"<sup>120</sup> Bringing AGUA members into the same room as the decision makers allows that to happen. Furthermore, CWC has observed that both elected officials and media correspondents are particularly attuned to authentic concerns voiced directly by community residents rather than filtered through representatives such as CWC staff, however well-intentioned. Even from a purely strategic standpoint, therefore, directly connecting elected representatives and reporters with AGUA members furthers the objectives of increasing public awareness regarding the Valley's water justice struggles and encouraging structural improvements through changes in law and policy.

CWC has also learned, however, that in certain settings, the target audience is much more receptive to absorbing the water justice message when it is spoken in a language with which they are familiar. We refer here to professional stakeholders, including regulatory officials, agency staff, water engineers, agricultural industry representatives, and even the more politically-involved farmers themselves. For this reason, CWC's role is not just supportive and facilitative: when appropriate, we engage as a direct participant as well.

A prominent example is our involvement in integrated regional water management planning processes (or IRWMPs) in the southern San Joaquin Valley. IRWMPs are ongoing

2011]

justice movement. Absent that frequent contact, whatever agency CWC possesses in attempting to speak for environmental justice communities evaporates.

We are acutely aware, however, of the tension and even hypocrisy inherent in the decision to engage with profal -1.malized

2011] *HUMAN RIGHT TO WATER IN CALIFORNIA* 531

IRWMP in lieu of an impacted community resident. In our defense, of course, is the fact that we are not disconnected from our community partners. Direct engagement involves repeated personal contact with individual residents and community-based groups in our efforts to help tackle particular communities' more localized, concrete drinking water challenges. This engagement helps us maintain a finger on the pulse of what is needed, what is wanted, and what really seems to work in practice in terms of solutions to drinking water challenges in the Valley's

frequently, for example, agency bureaucrats hold a public hearing in the middle of the weekday in the state capitol, hundreds of miles from impacted communities. This may fulfill minimum legal requirements for public participation,



persistently advocate for adjustments and improvements to “provided” participatory structures.<sup>134</sup> For example, CWC strives to make public meetings more accessible to the working poor and non-English speaking communities by pressuring hosting agencies to move the venues closer to impacted communities, schedule meetings in the evenings, and provide translation services. We also help transport low-income community members to venues when necessary and publicize these types of participatory opportunities in advance, such as by distributing flyers within impacted communities. These efforts are geared toward both supporting and improving existing participatory structures, which we believe are crucial venues for ensuring sustained influence on decisions affecting drinking water.

At the same time, when we perceive that community members’ voices are being disregarded in a decision that directly affects them, and that their message is not being “really listen[ed]” to in conventional participatory structures, we may opt to engage with decision makers on our own terms.<sup>135</sup> For example, we may assist impacted community residents, or even the AGUA coalition, to conduct a joint protest and press conference outside the relevant agency’s headquarters. This alternative participatory strategy can have transformative effects not just on the target audience, but on the participants themselves, awakening in them a consciousness of their own strength and political influence and culturing a sense of entitlement to justice— and fulfilled human rights— that may not have been previously instilled.<sup>136</sup>

When we choose this strategy, however, we are careful to articulate trenchant demands and recommendations and to direct

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Cole, *supra* note 103, at 458. Realization of the human right to water ultimately requires both top-down assistance and bottom-up demands and action—impacted communities “working together with their governments” in an iterative process. Hardberger, *supra* note 30, at 568.

134. Davids, *supra* note 97, at 2.

135. Without building a stronger voice for impacted communities and carving out a permanent space at the decision making table, it is “difficult to make meaningful inputs in the current ‘provided spaces,’” as no matter how loudly a community resident may shout in a public hearing, his or her voice can be disregarded if the decision makers do not feel accountable to the resident. Davids, *supra* note 97, at 7; Kuehn, *supra* note 103, at 648. (“True public participation and environmental justice cannot be realized until the communities that are impacted by environmental regulations have a voice in the process equal to that of regulated industry.”).







2011] *HUMAN RIGHT TO WATER IN CALIFORNIA* 537

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or the impact that corruption has on the basic trust required to maintain a community resource.” *Id.* at 602.