



inadequate clean water access.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

There is a range of possible solutions for small systems to address groundwater contamination problems.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.

---

<sup>2</sup> 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](http://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf).

<sup>3</sup> *Id.* at 3 n. 14, 4 nn. 36-37.

<sup>4</sup> 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>.

<sup>5</sup> 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>.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 5.



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.

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

Communities in the Central Valley have the most contaminated drinking water sources and are disproportionately impacted by the lack of safe water access.<sup>21</sup> Rural communities typically rely on unregulated private wells or small community water systems that serve less than 3,300 people.<sup>22</sup> 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.<sup>23</sup> Because private wells and small water systems are often unregulated, many communities lack information about their drinking water quality.<sup>24</sup> As such, they are more susceptible to nitrate contamination than deeper wells and larger systems.<sup>25</sup>

---

<sup>15</sup> *Id.*

<sup>16</sup> 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>.

<sup>17</sup> Camille Pannu, *Drinking Water and Exclusion: A Case Study From California's Central Valley*, 100 CAL. L. REV. 223, 244 (2012).

<sup>18</sup> U.C. DAVIS









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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup> *Mutual water companies* are private companies formed for the purpose of distributing water, and are owned by investing shareholders.<sup>52</sup> Before 2014, there were few groundwater quality regulations, so private water use was virtually unregulated.<sup>53</sup> 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.<sup>54</sup>

These three types of local water governance create a framework from which a diverse array of local governance structures can be formed.<sup>55</sup> 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.<sup>56</sup> This failure undermines California's

---

<sup>49</sup> CAL. WATER CODE §§ 20930, 30700.5-30700.6, 36490, 39903 (Deering 2015).

<sup>50</sup> *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>.

<sup>51</sup> CAL. PUB.

policy objectives of ensuring that water resources are put to the most beneficial uses and that every individual has access to safe drinking water.<sup>57</sup>

Most communities in the Central Valley live within the boundaries of two or more water districts.<sup>58</sup> Nevertheless, most rural districts are quasi-public, thereby ensuring that residents of those areas are precluded from participating in the district's decisions relating





---

communities face spatial barriers to political participation.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup> To overcome these barriers, current structures of governance must be reformed with rural unincorporated com



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.<sup>98</sup>

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

3. revis: 08/08/15 09:07:11 ~~WASSU (Statewide) 62 (1) 0121 (0.48) 0720 (2n) Minding the Gap (a) (g) (e) Dec 2 09:10:21 (62c) CL-AMQ.i~~



---

Groundwater Sustainability Agency (GSA) for each basin by June 30, 2017.<sup>112</sup> 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

authority, only when local agencies are unable to manage local groundwater issues.<sup>119</sup> In recognizing unique features of every groundwater basin, our solutions should also be uniquely tailored to each basin and the community it serves.<sup>120</sup> As such, it is imperative

use treatment, building new wells, or combining contaminated wells with cleaner sources.<sup>126</sup>

## 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.<sup>127</sup> 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.

*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 th



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

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.<sup>138</sup> Also, many communities do not have access to high speed internet, or lack the technical knowledge to navigate

---

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.<sup>142</sup> Therefore, we should seek to rectify these disparities by increasing institutional capacity and empowering communities to participate meaningfully to facilitate safe drinking water







long-term solutions, community organizations need to educate communities on how to navigate water governance systems.<sup>159</sup> 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.<sup>160</sup>

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.<sup>161</sup> 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."<sup>162</sup>

### III. C



