



WATER EDUCATION  
FOUNDATION

# 2021

## ACHIEVING WATER EQUITY IN CALIFORNIA: **Restructuring Water Management, Governance & Engagement**

A Report by the 2021 Water Education Foundation Water Leaders



*The Water Leaders Class recognizes and acknowledges the first people of ancestral and unceded territories across California. The Water Education Foundation office, for example, is located in ancestral and unceded territory of the Nisenan people. With respect to their elders, past and present, we recognize the Nisenan people who are still here and are committed to lifting up their stories and culture.*

## Disclaimer

This report, and the opinions expressed herein, were prepared by the authors in their individual or personal capacities, and do not represent the views of the Water Education Foundation (WEF) or its Board of Directors.

The sections presented in this report are useful in outlining various positions and perspectives; however, the statements expressed in this report are not necessarily endorsed by all Water Leaders or their employers.

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2021 William R. Gianelli Water Leaders Class

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## List of Abbreviations

AB	Assembly Bill
AWWA	American Water Works Association
Brown Act	Ralph M. Brown Act
CAAWEF	California African American Water Education Foundation
CalEPA	California Environmental Protection Agency
CEQA	California Environmental Quality Act
CFCC	California Financing Coordination Committee
CKH	Cortese-Knox-Hertzberg Local Government Reorganization Act
CRWA	California Rural Water Association
CVP	Central Valley Project
CWSRF	Clean Water State Revolving Fund
DACs	Disadvantaged communities
DFA	Division of Financial Assistance
DUCs	Disadvantaged unincorporated communities
DWR	California Department of Water Resources
DWSRF	Drinking Water State Revolving Fund
EJ	Environmental Justice
EPA	United States Environmental Protection Agency
GSA	Groundwater Sustainability Agencies
IRWM	Integrated Regional Water Management
LAFCo	Local Agency Formation Commission
MSR	Municipal Service Review



## List of Abbreviations (continued)

NEPA	National Environmental Policy Act
OSWS	State Water Board Office of Sustainable Water Solutions
PWSS	Public Water System Supervision
SADW	Safe and Affordable Drinking Water
SAFER	Safe and Affordable Funding for Equity and Resilience Drinking Water Program
SB	Senate Bill
SGMA	Sustainable Groundwater Management Act of 2014
SWP	State Water Project
TA	Technical Assistance
TAS	Treatment as a State (TAS)
TMF	technical, managerial, and financial
TMFSP	technical, managerial, financial, social and political
USWA	United States Water Alliance
WEF	Water Education Foundation
WELL	Water Education for Latino Leaders



## Executive Summary

California's management and governance of its water supply is in need of equitable change. Currently, 1 million Californians are without access to clean and safe drinking water. A stark statistic and dire situation, that number is likely to grow as the state's resources are exacerbated by drought conditions and climate change unless meaningful action is taken. California was the first state to formally recognize the Human Right to Water with legislative action in 2012. An action highlighted the need to develop inclusive water policies with the intent to prioritize diverse communities in water management. The complex water systems at both the state and local level, and the expansiveness of California's population and region, present unique challenges. However, every individual should be dignified with the right to safe, clean and high-quality drinking water regardless of his or her geographic location or economic means.

The 2021 Water Leaders Class consists of 23 individuals from diverse backgrounds across California's water industry who were tasked with preparing policy recommendations on the topic of water equity in California. The cohort met regularly throughout 2021 to discuss ways in which water equity may be achieved that are impactful, legislatively feasible, financially resourceful and inclusive of all Californians and Indigenous Americans.

It is important to note that every discussion surrounding water equity did not include the experiences of marginalized populations, as the cohort does not adequately represent these groups. In developing this report, the Water Leaders recognized that certain social, economic and

cultural groups and individuals have been both purposely and unintentionally excluded when developing water policy and equity solutions in California.

This report presents five key policy recommendations identified by the Water Leaders with 21 implementable actions that can help achieve a more robust and flexible system for achieving water equity in the management and governance of California’s water supply. Collectively, the following recommendations present a strategy to guide California policymakers, water managers and other interested parties in implementing change towards water equity and proactively maintaining the human right to water.

### **Recommendation 1: Increase emphasis on the Human Right to Water in existing California programmatic requirements, governance structures, roles and responsibilities.**



#### **Action 1: CEQA Guidelines Amendment**

The California Environmental Quality Act (CEQA) currently requires a public agency to provide findings of the environmental impacts a discretionary project may have. To ensure that the human right to water is equally considered, certain sections should include specific reference to and required evaluation of environmental impacts related to any lack of accessibility to clean and safe drinking water in the project area. CEQA Guidelines also should be amended to include documentation of impacts specific to marginalized populations, similar to the legislative implementation of SB 1000 (CA State Legislature, 2016) which added consideration of environmental justice for marginalized populations and disadvantaged communities in the development of general plans by local government.



#### **Action 2: Acknowledgement of the Human Right to Water in the Groundwater Sustainability Plan**

The acknowledgment of access to safe and affordable water as a human right for marginalized populations, disadvantaged communities, rural and low-income communities and individuals should be implemented through revisions to the groundwater sustainability plan (GSP) emergency regulations (California Code of Regs, Title 23 Sections 354.16(g), 354.34.b.2, 354.16, and 354.3). Updates to the GSP emergency regulations would expand inclusive decision-making and equity via the GSP five-year update and inclusive monitoring helps agencies understand impacts to areas where access to quality drinking water is impaired. GSP regulations should be amended

to specifically include documentation of impacts specific to marginalized populations, similar to the Legislature’s adoption of SB 1000 (CA State Legislature, 2016) which added consideration of environmental justice for marginalized populations and disadvantaged communities in the development of general plans by local government.



### **Action 3: Human Right to Water Local Advancement**

Currently, the Human Right to Water law applies only to state agencies. To encourage proactive coordination between local agencies to implement the Human Right to Water, the law should be formally included as a consideration in local funding and water management decision-making processes.

## **Recommendation 2: Encourage, enhance and promote direct community membership, engagement and involvement in water governance and management.**



### **Action 1: Bagley-Keene & Brown Act Amendment**

The Bagley-Keene Open Meeting Act and the Brown Act should be amended to include the use of social media and other digital mediums of communication to submit and accept public comment. This effort expands the capability of individual community members and marginalized populations to access meetings that occur at hours or locations that are inconvenient to them due to issues such as transportation, childcare, language or economic barriers.



### **Action 2: Community Funding Opportunities**

In efforts to develop authentic and equitable representation of marginalized populations, funding should be provided to community organizations to identify and encourage advocates who would otherwise be excluded from the decision-making process.



### **Action 3: Infrastructure & Workforce Diversity**

Hands-on training for youth in K-12 and certification programs to advance careers and leadership opportunities for members of marginalized populations should be created and

required. In addition to these programs, educational and outreach materials should be developed to supplement equitable distribution of workforce information that is simple, comprehensive and publicly available.



#### **Action 4: Water Governance Transparency**

Regional Water Boards should add a non-voting board member to support communication and transparency with local citizens and community members. The qualifications for this community advisor position should be broad so that any community member, even those without water experience, may join. In addition, all water governance and management openings, positions and appointments should be hosted in a centralized location online in a user-friendly format so that information of any agency (local utility districts, groundwater sustainability agencies, sanitary service districts, irrigation districts, wastewater districts and more) is readily available.

**Recommendation 3: Identify and support partnerships between neighboring, related or otherwise interconnected water systems and agencies to best meet their communities' needs.**



#### **Action 1: Knox Cortese Hertzberg Act Section 5640 Subdivision (c) Amendment**

The current language of the Government Code Section 56430 subdivision (c) permits but does not require an agency to review compliance with the California Safe Drinking Water Act. The code should be modified by the Legislature so that when conducting a Municipal Service Review for an agency with a public water system, Local Agency Formation Commission (LAFCo) is required to include a review of the agency's compliance with the California Safe Drinking Water Act.



#### **Action 2: Tribal Accessibility & Affordability**

The California Department of Water Resources (DWR) should specify and require tribal outreach and coordination efforts to incorporate adequate representation in its Groundwater Sustainability Plan regulations under the Sustainable Groundwater Management Act.



### **Action 3: Consolidation Guidance & Support**

Guidance by Safe and Affordable Funding for Equity and Resilience Drinking Water Program (SAFER Program) staff and their consultants is recommended to help water systems in need understand the financial impacts of consolidation and how those benefits work towards system resilience and household affordability in the long term.



### **Action 4: Strategic Regional Partnership for Increased Transparency & Accountability**

SAFER Program staff should mobilize support to establish regional partnerships to meet the needs of communities and marginalized populations served by an underperforming or failing water system and those who are dependent on domestic wells.

**Recommendation 4: Focus mechanisms such as funding, policy and programs on accessibility to safe drinking water for marginalized populations.**



### **Action 1: Increase Awareness of Existing Funding Resources**

Available state and federal resources should be better promoted and rebranded so that they are easily digestible and more accessible by any water professional, community member or interested individual. In addition, existing funding programs and options should receive more focused marketing and communication support so that access to all assistance opportunities are centrally located, partnerships to complete any application are formed and an education campaign is offered to enhance direct outreach to the water systems and communities that these resources were originally intended for.



### **Action 2: Develop Inclusive Funding Resources & Eligibility Requirements**

Terms and criteria currently used should be revised to include applicable communities, areas, groups, entities and/or persons as identified by local and regional organizations in California, and that such revised terminology be used consistently across financial assistance programs and other efforts.



**Action 3: Develop a methodology for review, guidance, and tracking of water supplier funding mechanisms to make accessibility easier for marginalized populations.**

The state should adopt a standardized grading mechanism for proposed water projects seeking grant and loan assistance that supports marginalized populations by assessing their current state of equity, needs assessment and ability to maintain infrastructure through current funding sources. Marginalized populations should also receive support to ensure that grant and loan awards within their system extend to include and achieve long-term operational and emergency funding needs.



**Action 4: Leverage Existing Funding to Empower Marginalized Populations & Ensure Sustainable Water Accessibility Solutions**

Funding should be leveraged to expand technical assistance providers' ability to aid and promote collaborative local solutions for marginalized populations and to develop long-term sustainable solutions that safeguard access and affordability of quality drinking water.

**Recommendation 5: State and local governments should create funding mechanisms and remove barriers to support affordable water for low-income households and marginalized populations connected to reliable water systems through legislative action and constitutional reform.**



**Action 1: Implement a Statewide Water Rate Assistance Program**

The Legislature should reintroduce SB 222 (Dodd, 2021) and the Governor should implement and fully fund a statewide water affordability program from a progressive funding source.



**Action 2: Authorize & Require Water Rate Discount Programs**

The Legislature or a citizen group should initiate and place a legislative constitutional amendment on the ballot that would amend the California Constitution to create a carve-out to Proposition 218's prohibition on cross-subsidies for water agencies. Constitutional action creates a pathway towards innovative and affordable rate-paying options.



### **Action 3: Use of General Revenues for Water Rate Discount Programs**

The Legislature should amend Proposition 218 and/or enact legislation explicitly stating that water agencies can use rental income to fund water assistance programs in perpetuity.



### **Action 4: Increase Infrastructure Investment Allocation & Strategically Target Distribution to Disadvantaged Communities, Marginalized Populations and Tribes**

The state should increase financial investment in infrastructure improvements to lower the fixed cost of water service and press the federal government to do the same. Funding investments should also be made available and reserved for tribes to build water system capacity.



### **Action 5: Implement Water Service Protections**

The Legislature should apply principles from Executive Order N-42-20 to California Health and Safety Code section 116910 by requiring public water systems to not discontinue residential water service for nonpayment of a delinquent account for customers who are deemed financially unable to pay as defined in code section 116910(a)(2). The Legislature should aid public water systems by amending California Health and Safety Code sections 5470-5474.10, 6520.5 to explicitly grant entities solely providing water services the ability to move fixed costs to tax rolls. This effort works toward achieving water equity by reducing the cost burden on renters and establishes a regular and reliable funding source for public water systems.





## Introduction

*In his book “The Big Thirst,” author Charles Fishman wrote, “The availability of water is the symbol of a civilized society—can you give your child a glass of clean, safe water when she’s thirsty?” Few would blink an eye at the statement that California is civilized. Yet for roughly 1 million Californians, 2.5% of the state’s population, the answer to Fishman’s question is no (Sparling 2020).*

Consider Cantua Creek, an unincorporated community in Fresno County. Cantua Creek is surrounded by over 1 million acres of irrigated cropland in the heart of the San Joaquin Valley, the world’s most productive agricultural region. The community of 500 (according to the 2020 U. S. Census Bureau report) sits adjacent to the California Aqueduct, the nation’s largest state-funded water conveyance project, which moves water from Northern California past Cantua Creek, primarily to cities and farms farther south. For its water supply, the community of Cantua Creek pumps groundwater from a depleted local aquifer. Over-pumping and dairy runoff in the local aquifer have led to a high concentration of nitrates as well as a high concentration of naturally occurring arsenic (Singh 2021). These contaminants have infiltrated the community’s drinking water source, leaving the water supply unsafe for human consumption. Every day, delivery trucks bring jugs of potable water to residents of the community. In addition to water deliveries, Fresno County purchases water from Westlands Water District to cover the shortage while the community’s new well is being built. However, the cost for Westlands water is significant (up to \$1,444 per acre-foot during the 2012-2016 drought) and despite raising rates to end users, the town is still in debt due to the inability to cover the cost of water imports (Vad 2021). This community is home to local farmworkers, the families that do the hard labor that provides essential food for the entire nation. Yet, they lack access to clean water for everyday

activities. Cantua Creek is a community that experiences water inequity, not only because it does not have safe potable drinking water but also because residents of Cantua Creek do not have the agency to exercise meaningful control over their own water supply, and therefore their own health and safety.

An even greater percentage, up to 10%, of Indigenous people across the United States lack access to safe tap water and sanitation. The U.S. government has underfunded and neglected the water and sanitation needs of tribes for decades. Drought has further exacerbated the supply issue by highlighting the inadequate infrastructure and legacy contaminants (Lakhani 2021).

Advancing water equity means identifying and developing policies that improve outcomes and advance capabilities in communities like Cantua Creek, and in sovereign tribal nations. In this report, we identify and recommend five policies that advance water equity in California in three key areas: Human Right to Water in existing governance and policy; community engagement and partnerships; and funding mechanisms. In each of these areas, we provide context and background, develop policy recommendations and identify three to five specific actions from each recommendation that seek to advance water equity.

## Definition of Water Equity

In order to develop and recommend policies that advance water equity, it is important to first have a deeper understanding of what is meant by equity both generally and in the context of water. Equity is a polysemic concept: a concept that means different things to different people. In this report, we do not presume to define equity for all peoples at all times; however, here are some examples of how experts have defined equity. According to The Milken Institute of Public Health at George Washington University, “Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal

## EQUITY VS. EQUALITY

“Equality means each individual or group of people is given the same resources or opportunities. **Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal outcome...** it’s critical to remember that social systems aren’t naturally inequitable — they’ve been intentionally designed to reward specific demographics for so long that the system’s outcomes may appear unintentional but are actually rooted discriminatory practices and beliefs.”

(MPH@GW, the George Washington University online Master of Public Health program)

outcome.” The importance of this definition is the understanding that while the outcome is equal, the resources needed and obstacles faced by different communities, organizations and individuals are not. Equity is often confused with equality, but they are significantly different. Equity recognizes that individuals and groups of people/communities start out with different circumstances and means (unequal access to resources) yet are required and often expected to achieve the same outcome. Therefore, “the route to achieving equity will not be accomplished through treating everyone equally. It will be achieved by treating everyone equitably or justly according to their circumstances” (Race Matters Institute 2014).

What does this mean in the context of water? According to the US Water Alliance, “water equity promotes the provision of reliable, safe, and accessible water services for all.” This definition recognizes that advancing water equity requires a level playing field for access to safe and reliable water. Advancing access to safe and reliable water will require a significant investment in areas where such investments have historically been neglected, whether through accident or through exclusive legislative and regulatory policies.

Water inequity is rooted in political, economic and social dynamics. It is important to note that inequity is systemic and intersectional. A recently released Draft Racial Equity Resolution from State Water Board staff acknowledges how government programs have been established over a structural framework that perpetuated inequities based on race, and in particular the “role racism has played in creating inequities in affordability and access to clean and safe water and in the allocation and protection of water resources” (State Water Board 2021a). Historically, members of marginalized populations were forbidden from purchasing land, property or even residing within developed communities that had reliable water systems and structures. On the outskirts of affluent areas are communities that, to this day, lack basic resources, including the essential human right to water. Historical and current racist policies have perpetuated a lack of access to water; selective annexation adds to this by closing the door on low-income communities from incorporation as more desirable cities expand. While some of these marginalized populations now have access to water, it may be unsafe to consume due to significant contamination, leaving residents no choice but to purchase and use bottled water for everyday life – from drinking to cooking and cleaning.

Water rights in California were established during a time of significant segregation and racially driven policies that determined who could have water rights, influencing many of the water inequities we see today. Senior rights were established as Indigenous people across California were pushed off their land or simply killed. At the same time, Asian Americans, Latinos and African Americans faced laws and policies that limited their ability to own land and claim water rights (Sisk and Barrigan-Parilla 2021). It was also during a time when California’s population was smaller and more rural/agricultural. Since 1914, when California’s population was around 2.9 million, the population has grown to more than 39.7 million in 2021. While this report

acknowledges the inequities of surface water rights, it does not address them directly but instead focuses on what can be done to elevate the emphasis on the human right to water in other existing regulations in California.

Water inequity intersects with other issues of injustice. The UCLA Luskin Center for Innovation also recognizes the need for Climate Equity, Energy Equity and Transportation Equity. Water inequity is accompanied by inequity in other areas; the same communities that lack access to safe, reliable water often also lack access to protection from heat waves and food deserts and are not afforded access to legislative resources, decision-making opportunities and other opportunities accessible to more affluent communities. As climate change brings hotter temperatures and extended droughts to California, water inequity will only become starker.

In California, water inequity can be seen in its own unequal natural endowment of water resources. About 75% of California's water resources are located north of Sacramento, while 80% of the population lives south of the city. To overcome this natural endowment, the state has appropriated vast amounts of resources in engineering a system that can deliver water supplies to the entire state. However, these investments have historically excluded large swathes of the population by denying political agency and decision-making power in the management of water resources and access to safe and reliable water supplies.

We, the 2021 Water Leaders Class, believe that taking action to advance water equity is both worthwhile and necessary. This is a view that we believe should be supported by all people in California, including those in positions of privilege and power, especially related to water management and governance.

We believe that a lasting shift towards water equity should be led and guided by those historically excluded from the decision-making process. We acknowledge that while certain policy recommendations may advance equity, these recommendations may not achieve equity as accepted by those who are commonly left out of the discussion. We acknowledge that there are voices that are unrepresented in the authoring of this report, and believe that equitable change can only be made with the inclusion of marginalized populations at the table.

Words are important. It is important that we both acknowledge the historical and current injustices faced by groups experiencing water inequities and that we talk about these groups in a way that is inclusive and not ostracizing, and acknowledge that these groups have not acted in any way to place themselves in a position of inequity. The 2021 Water Leaders Class extensively discussed terminology for people and groups experiencing water inequity, identifying deficiencies with existing prominent terminology (e.g., "disadvantaged communities") and with alternatives. We have chosen to use the term "marginalized populations" to describe groups experiencing water inequity to point to the structural and systemic forces at play in introducing and reinforcing water inequity. However, we would like to acknowledge that marginalized

populations and their experiences are not homogenous. Marginalized populations experience discrimination and exclusion (social, political and economic) because of unequal power relationships across economic, political, social and cultural dimensions. Examples of marginalized populations include, but are not limited to, groups excluded due to race, gender identity, sexual orientation, age, physical ability, language and/or immigration status.

## Background

California is faced with balancing limited surface water and groundwater supplies with the water needs of a growing population and multiple beneficial uses and users. Many factors, such as water supply and quality, climate change impacts, water treatment distribution and infrastructure capabilities contribute to the lack of safe and affordable drinking water for approximately 1 million Californians (Sparling 2020). It is universally recognized that the task of addressing safe and affordable drinking water for marginalized populations and all communities is complex, difficult and layered within other social justice issues (London et al. 2018, Hanak et al. 2018, WEF 2020).

### Human Right to Water

In 2012, California became the first state to formally recognize the Human Right to Water with the passage of AB 685, which added to the Water Code Section 106.3:

“It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”

The primary intent was to direct state agencies to consider the human right to water in policies, processes and actions. Some agencies have implemented additional measures and regulations to further the human right to water. For example, with Resolution No. 2016-0010, the State Water Resources Control Board (State Water Board)

# AB-685

## HUMAN RIGHT TO WATER

“(a) It is hereby declared to be the established policy of the state that *every human being has the right to safe, clean, affordable, and accessible water* adequate for human consumption, cooking, and sanitary purposes.

(b) All relevant state agencies...shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria...

(c) This section *does not expand any obligation of the state to provide water or to require the expenditure of additional resources* to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).”

(CA Water Code 106.3)

made the human right to water a core value in guiding policies and programs of the State Water Board and Regional Water Quality Control Boards (Regional Water Boards).

The human right to water applies to all Californians. Implementation, however, falls on state agencies, not local entities.

The SAFER Program was established to address the human right to water, with the goal of providing safe drinking water to every Californian. Annually, the SAFER Program prepares a Fund Expenditure Plan, based on an annual Needs Assessment, for the next fiscal year to propose to the State Water Board for adoption. SB 200, which established the Safe and Affordable Drinking Water (SADW) Fund, requires that “the board consult with an advisory group to aid in meeting the purposes of the fund expenditure plan.” The SAFER Advisory Group provides the State Water Board feedback on the SAFER Fund Expenditure Plan and other related policies and analyses. The SAFER Advisory Group is composed of 19 appointed members that represent public water systems, technical assistance providers, local agencies, nongovernmental organizations, residents served by community water systems in state-defined disadvantaged communities, state small water systems, domestic wells and the public. The SAFER Program is directed by policy and funding that makes community engagement a priority. Examples include all SAFER Program employees are trained in the messaging of the program, participation and engagement during public meetings are monitored, Spanish-translated documents are readily accessible on the SAFER Program website and translation services are provided at public meetings.

In addition to community engagement, SAFER emphasizes consolidation and partnerships among water systems as a way to better serve those with unreliable, unsafe and/or unaffordable drinking water. The SAFER Program is making meaningful progress to reduce the number of Californians who lack access to safe and affordable drinking water. However, several barriers still exist to efficiently and effectively direct resources for regional partnerships to enhance water access, equity and resilience at the local level.

## Statutory Framework

The California Environmental Quality Act (CEQA), the Sustainable Groundwater Management Act (SGMA), and local governing bodies have a substantial role in the way state and local entities make decisions concerning water. However, there is little to no acknowledgement or specific incorporation of the human right to water into the guidelines for these entities and therefore it is often not prioritized. The guidelines and frameworks of these entities do not require explicitly stating impacts or outcomes of decision-making with respect to marginalized populations.

The authors of this report acknowledge that there are many conflicting priorities that make it difficult to manage water supplies and systems to ensure the human right to water. Of note, is the long-standing priority-based water rights system (i.e. “first in time, first in right”) used to allocate surface water supplies in California. For California to balance these multiple uses and users, it must follow water rights when allocating surface water. More fundamental changes to water and property rights frameworks in California may ultimately be needed to fully address the inequities in water resources and other issues, but this is not the focus of recommendations in this report. Given the current framework there are still several recommendations aimed at better empowering marginalized populations towards implementation of sustainable solutions that will improve and safe-guard safe affordable drinking water accessibility (London et al. 2018).

### California Environmental Quality Act

CEQA is a set of statutes requiring state and local agencies to identify the environmental impact of a project and avoid or mitigate the impacts, if feasible.

The CEQA Guidelines, housed within the California Code of Regulations (CCR), provide the framework within which CEQA

# CEQA

## CALIFORNIA ENVIRONMENTAL QUALITY ACT

“CEQA is intended to inform government decisionmakers and the public about the *potential environmental effects* of proposed activities and to *prevent significant, avoidable environmental damage.*”

(CA Gov. Office of Planning & Research)

is administered and incorporated to interpret both the statutory mandates and legal decisions concerning the statute, guidelines and principles.

Per the CEQA Guidelines, evaluation of environmental impacts must include analysis in 20 environmental factor categories, which are defined in Appendix G to the Guidelines. Referred to as the Environmental Checklist form, Appendix G includes specific criteria against which the proposed action must be evaluated for its potential to affect ranging from “No Impact” to “Potentially Significant Impact.”

However, neither CEQA nor the CEQA Guidelines explicitly require consideration of the human right to water or environmental justice. Therefore, with the possible exception of projects requiring a Water Supply Availability Analysis SB 610 (Costa, 2011), or projects in regions covered by a General Plan SB 1000 (CA State Legislature 2016), impacts to water accessibility or affordability are less likely to be expressly addressed.

CEQA also requires that the public have opportunities for meaningful engagement in the process of developing plans, considering alternatives and evaluating impacts. Although the public have opportunities for engagement during scoping and public comment periods, CEQA Guidelines do not require that projects address the unique experiences of marginalized populations or disproportionate impacts to these populations.

### **Sustainable Groundwater Management Act**

On September 16, 2014, Governor Jerry Brown signed into law a legislative package, composed of AB 1739 (Dickinson), SB 1168 (Pavley), and SB 1319 (Pavley), collectively known as SGMA. This legislation created a statutory framework for sustainable groundwater management in California without causing undesirable results. Under SGMA, high- and medium-priority basins shall reach sustainability within 20 years of implementing their Groundwater Sustainability Plans (GSPs),

# **SGMA**

## **SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

“[SGMA] requires local agencies to form *groundwater sustainability agencies* (GSAs) for the high and medium priority basins. GSAs develop and implement groundwater sustainability plans (GSPs) to *avoid undesirable results and mitigate overdraft* within 20 years.”

(CA Dept. of Water Resources)



by either 2040 or 2042 depending on whether the basin is critically overdrafted.

The resulting GSP Emergency Regulations discuss the requirements of a GSP and only mention “human right to water” in one section. Title 23 CCR Section 350.4.(g) provides in relevant part that “the Department shall consider the state policy regarding the human right to water when implementing these regulations.” The human right to water, or discussion of the unique experiences or the disproportionate effects of marginalized populations, is not required to be included in the GSP. Therefore, impacts to water accessibility or affordability are less likely to be expressly addressed.

### SB 1000 and Local Governing Bodies

SB 1000 (2016) requires city and county general plans to incorporate an Environmental Justice (EJ) section (among other items) to address how changes would affect disadvantaged communities in the jurisdiction. SB 1000 adds specific requirements for EJ and disadvantaged communities (DACs, term used in SB 1000), including: specific statement of policies and objectives to reduce health risks for DACs, increase DAC engagement in decision-making and prioritize improvement of conditions for DACs.

In addition to SB 1000, a growing number of local jurisdictions have implemented EJ policies, and over 140 cities and counties plan to update EJ policies by 2022.

### Outreach and Engagement

Previous attempts to codify community engagement practices in California water policy, including CEQA and SGMA, have not produced the desired results. How can these efforts to codify engagement be improved? Why have they been insufficient? How can we better encourage, enhance and promote direct community membership, engagement and involvement in water governance?

SGMA specifically requires groundwater sustainability agencies (GSAs) to consider the interests of “disadvantaged communities, including, but not limited to, those served by private domestic wells

## SB-1000

### INCORPORATING ENVIRONMENTAL JUSTICE INTO GENERAL PLANS

“[A] general plan should including the following elements...  
*An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a disadvantaged community...*”

(CA Govt. Code 65302(h)(1))

or small community water systems.” DAC participation in GSA formation and operation has been underwhelming. Fewer than 20% of DACs are involved directly with their GSA. Unincorporated DACs are four times less likely to participate in their GSA than incorporated DACs (Dobbin 2018).

As previously described, while CEQA emphasizes public participation, there are no formal requirements to evaluate environmental justice impacts under CEQA. This community outreach effort, like SGMA, has fallen short. While the National Environmental Policy Act (NEPA) has identified “promising practices” for community engagement, similar community engagement practices have not been identified or required by the CEQA Guidelines.

Water equity in California cannot be achieved without significant support for individual and diverse communities. Challenges faced in accessing safe and affordable drinking water are unique to the community facing them. A one-size-fits-all approach is insufficient to achieve water equity goals. Even when a problem seems to be solved, such as the installation of water treatment or consolidation with a neighboring system, it is up to the community to manage and operate that system to ensure sustained accessibility and affordability. Ensuring sustainable operations requires engagement with the community at all levels to determine the best path forward for the community. It requires educating the community on local water policies and empowering the community and its members to take action in managing their local water resources.

## Accessibility

The need to provide all Californians with access to safe and affordable drinking water is widely recognized (State Water Board 2015, ACWA 2017, London et al. 2018, Hanak et al. 2018, NCWA 2019). Often the people most impacted by these water issues reside in relatively small and remote economically distressed areas, although they are sometimes located in pockets of major urban centers such as the San Francisco Bay Area (WEF 2020). Marginalized populations have historically faced institutional obstacles and inequitable resources leading to the current lack of access to water.

The State Water Board’s 2021 Drinking Water Needs Assessment shows that approximately 620 public water systems and 80,000 domestic wells are at-risk of failing to provide sufficient drinking water that meets basic health standards. The State Water Board’s SADW Fund dedicated \$130 million in state funds annually over 10 years (\$1.3 billion in total) to provide for key programs to investigate community issues and address water supply access. The 2021 Drinking Water Needs Assessment estimates a \$4.6 billion funding gap for water system infrastructure needed to ensure Californians have access to safe and affordable drinking water (State Water Board 2021b). Several recent reports have focused on potential benefits, opportunities and financial impacts of water system or broader utility consolidation in the United States (Henrie and Seidel 2019,

Feinstein et al. 2020, Nysten et al. 2018, Norriss et al. 2021, Vedachalam et al. 2020, USWA 2019a, USWA 2019b, USWA 2019c).

Federal, state and local governments, as well as non-governmental organizations, have dedicated considerable time, money and other technical assistance to support marginalized populations' access to safe and affordable drinking water. Despite these efforts, impediments to water accessibility remain, such as overarching California water frameworks (e.g., seniority of water and property rights versus community needs) and insufficient technical resources to adequately define needs and develop solutions.

## Affordability

Compounded by California's high cost of living, many residents served by reliable water systems cannot afford to pay their water bill. While there is no universal measure of affordability for water system service, the California Department of Public Health defines the affordability threshold as 1.5% of the median household income. A study conducted by the Office of Environmental Health Hazard Assessment (OEHHA) in 2019 concluded that about 16% of water systems had average water bills exceeding this affordability threshold (OEHHA 2019). The COVID-19 pandemic further demonstrated the critical need for funding assistance programs for water in California. A State Water Board survey of small and large water systems across California estimated that over 170,000 households were delinquent on their water bills by more than \$1,000 and there was over \$789 million in household water debt across the state for the period of March through October 2020 (State Water Board 2021c).

Water system providers serving customers who are unable to pay their bills face reduced revenue from ratepayers that providers need to manage their water systems. Providers are facing increased costs to meet new treatment standards, diversify supply, adapt to climate change, rehabilitate aging infrastructure and maintain existing systems. Additionally, there are rising costs for imported water as water becomes increasingly scarce. The rising costs for water deliveries have created pronounced and disproportionate affordability challenges for small community water systems across the state, particularly in low-income communities where service cost rate increases outpace income growth.

Public agencies face limited funding flexibility inhibiting water affordability. Proposition 218 amended the California Constitution in 1996 to require that public agencies ensure fees or charges for service do not exceed the proportional cost of the benefit attributable to each parcel. Additionally, the California Constitution prohibits the fee or charge from including any costs attributable to general benefits. If the fee or charge violates this proportionality requirement, then it is treated as a "tax" subject to strict requirements—like voter approval—under other constitutional provisions added by Proposition 13 and Proposition 26. These constitutional

requirements significantly limit public water agencies from implementing funding structures that can help make water more affordable for customers needing assistance.

## POLICY RECOMMENDATIONS



**RECOMMENDATION 1: INCREASE EMPHASIS ON THE HUMAN RIGHT TO WATER IN EXISTING CALIFORNIA PROGRAMMATIC REQUIREMENTS, GOVERNANCE STRUCTURES, ROLES AND RESPONSIBILITIES.**

The human right to water applies to all Californians, both rural and urban, however implementation falls on the state, not local entities. Actions to implement this policy recommendation, listed below, focus on state programs and local opportunities to more effectively extend the human right to water to the local agency level and local water management systems through modification or adaptation of existing regulatory frameworks rather than new legislation or regulations. The actions below focus on incorporating the human right to water through the existing frameworks for CEQA and SGMA, and increasing accountability and opportunities for the human right to water at the local level.



## Action 1: CEQA Guidelines Amendment

Revise Appendix G: Environmental Checklist form to the CEQA Guidelines to require specific consideration of a project's potential to impact the safety, affordability or accessibility of drinking water to communities or individuals.

Under CEQA, an agency is required to find that a "project may have a 'significant effect on the environment'" if, among other things, "the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly" (California Department of Justice 2012).

Given that AB 685 established safe, accessible and affordable water as a human right, it stands to reason that any action that may degrade or threaten these key criteria of satisfactory drinking water would have an "adverse effect on human beings" and thus should be a matter of great importance for identification, evaluation and reporting as part of the CEQA analysis process.

In addition, ensuring human rights are secured requires meaningful public participation and full access to information concerning water, water services and the environment. Therefore, as a primary instrument by which the public is informed, the CEQA process should intentionally consider the human right to water. CEQA analyses are often written through a more general lens and lack direct discussion of how decisions would benefit or impact marginalized populations. This diminishes the trust these groups may have in the documents and stifles desires to contribute feedback for fear it will not be considered. CEQA should include specific objectives for evaluating and reducing impacts to marginalized populations, as well as targeted analyses and reporting through the viewpoint of marginalized populations to increase transparency of the effects that water infrastructure development and water policies may have on marginalized populations.

Per the CEQA Guidelines, evaluation of environmental impacts must include analysis in 20 environmental categories, which are defined in Appendix G to the Guidelines. Referred to as the Environmental Checklist form, Appendix G includes specific criteria against which the proposed action must be evaluated for its potential to affect ranging from "No Impact" to "Potentially Significant Impact."

The following should be amended or revised to include specific reference to, and required evaluation of, impacts to nearby communities or individuals in the affordability of or accessibility to clean/safe drinking water:

- Section IX - Hydrology and Water Quality
- Section XVIII - Utilities and Service Systems
- Section XVIII - Mandatory Findings of Significance

The CEQA Guidelines should also be amended to require:

- Specific statement of policies and objectives to reduce health risks for marginalized populations
- Objectives to increase marginalized populations’ engagement in decision-making
- Objectives to prioritize improvement of conditions for marginalized populations

California’s recognition of the need to understand and remedy inequities affecting marginalized populations is evident in the passage of AB 685, but also in Senate Bill 1000 (2016), which regulates general land use plans. SB 1000 requires cities and counties preparing general plans to add specific requirements for EJ and DACs (term used in SB 1000), including: specific statement of policies and objectives to reduce health risks for DACs; increased DAC engagement in decision-making; and improvement of conditions for DACs. Under CEQA, actions must be assessed for consistency with local and regional requirements. General land use plans (and by extension the EJ considerations from SB 1000) are considered in CEQA analyses, wherever applicable. The general plans (and associated EJ components) become an aid for determining significance. This synergy between planning elements, when appropriately utilized, can further the goal of human right to water being recognized and considered during CEQA analysis.

The proposed revisions to the CEQA Guidelines will further ensure that specific attention is directed to the human right to water.



## **Action 2: Acknowledgement of the Human Right to Water in Groundwater Sustainability Plans (GSPs)**

Department of Water Resources to require a Human Right to Water Acknowledgement in GSP Emergency Regulations.

SGMA is not meant to correct groundwater levels or groundwater quality but instead to protect against undesirable results as defined by GSAs. Implementation of GSPs provides a long-term solution for sustainability. By 2040, or 2042, high and medium priority basins are to reach sustainability, which will help the accessibility issues related to the human right to water since water levels should not drop below the minimum threshold set in GSPs. The GSP emergency regulations (California Code of Regulation 2016) provide the following definition:

*“Minimum threshold refers to a numeric value for each sustainability indicator used to define undesirable results.”*

Figure 1 from the Department of Water Resources (DWR) Sustainable Management Criteria Best Management Practices (DWR 2017) shows a hypothetical hydrograph of groundwater level. The minimum threshold shown is the water level the GSA wants to be above by 2040. The minimum threshold will help communities and domestic well owners plan on how deep to drill new wells and limit the number of wells that go dry if they are drilled deeper than the minimum threshold.

Inclusion of the human right to water should be required in GSPs so the agencies can better understand the current conditions related to the human right to water and monitor groundwater level and groundwater quality of sources serving marginalized populations.

This action is to add the acknowledgement of access to safe and affordable water as a human right to the GSP regulations and include marginalized populations in the monitoring networks for groundwater levels and groundwater quality.

The following text in bold should be added to the existing GSP emergency regulations.

- Section 354.16 Each Plan shall provide a description of current and historical groundwater conditions in the basin, including data from January 1, 2015, to current conditions, based on the best available information that includes the following:

***(h) Acknowledgement of the human right to water and identification of marginalized populations' water systems and areas where there is no access to safe drinking water.***

- Section 354.34:

*(b) Each Plan shall include a description of the monitoring network objectives for the basin, including an explanation of how the network will be developed and implemented to monitor groundwater and related surface conditions, and the interconnection of surface water and groundwater, with sufficient temporal frequency and spatial density to evaluate the affects and effectiveness of Plan implementation. The monitoring network objectives shall be implemented to accomplish the following:*

*(1) Demonstrate progress toward achieving measurable objectives described in the Plan.*

*(2) Monitor impacts to the beneficial uses or users of groundwater **that includes areas identified in section 354.16(h).***

*(3) Monitor changes in groundwater conditions relative to measurable objectives and minimum thresholds.*

*(4) Quantify annual changes in water budget components.*

- Update GSP checklist to include:

***354.16 Description: Acknowledgement of the human right to water***

***354.34 Description: Monitoring impacts to the beneficial uses or users of groundwater that includes areas identified in section 354.16(h).***



In addition, requiring GSPs to include specific objectives for benefiting or reducing impacts to marginalized populations, as well as targeted analyses and reporting through the viewpoint of marginalized populations would increase transparency of the effects that water infrastructure development and water policies may have on marginalized populations.

In addition, the following should be added to the GSP:

- Specific statement of policies and objectives to reduce health risks for marginalized populations
- Objectives to increase marginalized populations' engagement in decision making
- Objectives to prioritize sustainability for marginalized populations

If the above items are added to the GSP emergency regulations, then acknowledgement of the human right to water in the GSP would be included when developing the GSP five-year update. In addition, including marginalized populations as a beneficial user in the monitoring network would help ensure their inclusion in the monitoring of groundwater conditions. The monitoring data can be used by other agencies to help understand the impacts to areas where there is no access to clean drinking water and identify how to address groundwater levels and groundwater quality impacts to help improve the human right to water.



### **Action 3: Human Right to Water Local Advancement**

Improve coordination and representation to advance the human right to water at the local level.

The human right to water as written applies to state agencies, but implementation at the local level is critical to ensuring that all Californians have access to safe, clean and affordable water. This action recommends that local agencies and districts proactively address human right to water issues and improve representation on local decision-making boards to ensure inclusivity and diversity. Issues of equity, community representation and inclusive decision-making are the result of long-standing and historical systemic problems and require action to be rectified now.

Local water entities should proactively address water quality and water supply challenges, particularly for water systems that are failing to meet the human right to water (State Water Board 2021d). As discussed above, SGMA and CEQA are state-led efforts where the human right to water is relevant. Additional localized efforts should also elevate the human right to water in decision-making. For example, the Voluntary Diversion Reduction Program in the Sacramento-San Joaquin Delta in 2015 focused on enhancing coordination among agricultural users with claimed riparian water rights to proactively address drought conditions and avoid future curtailments. While this effort is considered a success, it could have been improved by the inclusion of human right to water considerations and other water users in the Delta (e.g., those reliant on groundwater). A proactive approach is to formally include the human right to water in all local funding and water management decision-making (e.g., add a human right to water component to the Integrated Regional Water Management (IRWM) implementation grants).

Local entities should utilize the human right to water failing water systems criteria list developed by the State Water Board and other resources (e.g., DWR Small Water Systems and Rural Communities Drought Planning) to inform their efforts (DWR 2020).

Local water boards should assess effective opportunities and voting structures that promote the human right to water and effectively integrate voices from local communities in a way that leads to more equitable decision-making. In many instances, local board members (e.g., for GSAs, reclamation districts, local water agencies) represent large landowners whose concerns may not be reflective of broader community needs. Although the landowner voting structure is legal (Myers 1974; *Salyer Land Co. v. Tulare Water Dist.* (1973) 410 U.S. 719) and effective in some regards, the structure promotes decisions that provide the greatest value to landowners rather than benefits to all water users and community members. Explicit equity issues of water access and water quality impacts on marginalized populations often are not being addressed in those spaces.

The Community Water Center found that between 2014-2018 nearly 70% of local drinking and non-drinking water boards in the southern San Joaquin Valley did not hold any elections over a four-year time period (Weiner 2018). Where elections were held, nearly 85% of seats went uncontested. A key recommendation from their report is to “continue research on representation and accountability in elected seats that shape the Human Right to Water.” (Weiner 2018.) IRWM is one particular statewide program where community members can and should be incorporated into the decision-making framework to guide investments in local water management solutions. Local entities may develop guidelines for allocating an appropriate ratio of seats for community members or specific groups. The SAFER Advisory Group is one example where appointees represent public water systems (both large and small), nongovernmental organizations, domestic wells and more.



**RECOMMENDATION 2: ENCOURAGE, ENHANCE, AND PROMOTE DIRECT COMMUNITY MEMBERSHIP, ENGAGEMENT AND INVOLVEMENT IN WATER GOVERNANCE AND MANAGEMENT.**

**Barriers to effective community engagement and empowerment include:**

- **A lack of general accessibility to public forums where water decisions are made**
- **A lack of support for and emphasis on programs designed to educate the public as well as efforts to develop an empowered, diverse and engaged water workforce**
- **A lack of compensation and access for community members to participate in their local water management/governance**

**The recommended actions outlined below are aimed at overcoming these barriers.**



## Action 1: Bagley-Keene & Brown Act Amendment

Amend the Bagley-Keene / Brown Act to allow public comment to be collected via digital platforms (i.e. social media) and in digital formats (i.e. video or audio); to further encourage use of digital platforms (including social media) for hosting public meetings in addition to in-person meetings.

The Brown Act was enacted in 1953 to address the public's right to participate in meetings held by legislative bodies including local agencies. (California Government Code § 54950 et seq.) Meetings are defined as "any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the legislative body." (§ 54952.2 (a)). As amended (by Stats. 2016, Ch. 265, Sec. 1. (AB 2257) Effective January 1, 2017), the Brown Act required legislative bodies with an internet website to post meeting materials on its site effective January 1, 2019. The meeting materials including an agenda must be "retrievable, downloadable, indexable, and electronically searchable." While the Brown Act provides a definition and provision for access of social media platforms, it does not specify the use of social or digital media for public comment.

Due to the recent impacts of COVID-19 in California, many legislative bodies including local agencies adapted to hosting meetings on internet-based platforms. This temporary transition was allowed by executive orders modifying the Brown Act. The expanded meeting strategies provide opportunities for public comment via written (paper and email), telephone, and internet-based platforms such as Zoom, Microsoft Teams and Adobe Connect.

To further encourage the option to use internet-based platforms for legislative body meetings, the Brown Act should be updated to include provisions for accepting public comment via digital mediums and internet-based social media platforms. While oral comments can be recorded and archived through telephone or internet-based platforms, there are challenges to capturing informal responses and comments such as meeting chat features. By surveying the legislative bodies currently implementing internet-based social media platforms (i.e. Facebook Live, YouTube) for meetings, challenges and recommendations for provisions could be compiled to develop an amendment to the Brown Act. A consideration is the requirement for the internet-based social media platform to be "open and accessible to the public" allowing participation free of charge. This provision (§ 54952.2) was last updated with the caveat, as "Amended by Stats. 2020, Ch. 89, Sec. 1. (AB 992) Effective Jan. 1, 2021. Repealed as of Jan. 1, 2026, by its own provisions." This language suggests plans to reconsider or revise the provisions. As of Sept. 16, 2021, Governor Newsom signed Assembly Bill 361, which provides additional clarification on the use of virtual meetings through Jan. 1, 2024. However, the provisions may not continue to support the remote and virtual meeting options for agencies that meet less frequently.

Similar to the Brown Act, the Bagley-Keene Open Meeting Act requires state agencies and boards to hold public meetings and accept public comment. However, the COVID-19 pandemic limited in-person meetings prompting Governor Newsom to enact the March 17 Executive Order that augments both acts to allow meetings to be hosted “telephonically or otherwise electronically” without explicitly defining what electronically means. If we could ensure that accessibility and safety requirements were met, the addition of digital and social media platforms beyond video communication applications would be possible. If only for the period of the pandemic, it would be a great opportunity to test an interim process that would reach marginalized populations on platforms they are comfortable using.



## **Action 2: Community Funding Opportunities**

Direct available funding to community members for time reviewing documents, developing alternatives and/or attending public meetings. Funding might be provided to trusted community organizations or leaders to distribute to individuals. Incentive structures should be created (for example, paying per response up to a certain amount, or by public meeting attendance) to encourage participation. Allocate funding for community consultants (e.g. environmental justice organizations).

CEQA and SGMA require agencies to provide opportunities for community involvement in water governance. However, not all communities have access to the members, advocates or representatives who are active in the water sector. Not only is accessibility an issue, community members may not have the time, capability or resources (such as childcare or transportation) to spend catching up on terminology or staying current on water discussions that their local water board or agencies are having related to and impacting their community.

To ensure that policies are equitable, members of marginalized populations should be encouraged to participate in water governance and compensated for their involvement by local community organizations. Rather than placing the responsibility on agencies or boards that may result in forced or inauthentic connections or transactional relationships with community members, funding would be directed to community-trusted organizations to compensate them for efforts to garner community participation. This process allows agencies and boards to reach the broader community and the benefits of increased participation are distributed back to the community through local organization support. This process will allow communities to be compensated for their participation and create opportunities for those who do not want to be on a board or hold a direct leadership position to participate and take ownership of water decisions in their communities.

This policy recommendation is based upon existing precedent for paid participation in decision-making through the California Environmental Protection Agency (CalEPA) EJ Small Grants

Program and the Justice40 Initiative. Justice40 is a federal commitment to have 40% of the overall benefits of federal investments in climate and clean energy distributed to disadvantaged communities, inclusive of the water sector.

Funding from the Justice40 Initiative can be directed toward California communities using the Drinking Water State Revolving Fund and Clean Water State Revolving Fund that are typically used for state infrastructure projects. These projects require increased community benefits and participation, which can be measured using the metrics that are currently being created by the White House Environmental Justice Advisory Council. While funding is currently limited to the revolving funds, the U.S. Environmental Protection Agency (EPA) is working to establish an official process. Efforts for increased community engagement through compensation and benefits creates further avenues of access via funding support for training and workforce development.



### **Action 3: Infrastructure & Workforce Diversity**

Develop and support programs and opportunities for community members to participate in the water infrastructure workforce and benefit from that participation. Develop and support community water education programs that establish pathways to water leadership.

It is essential for the water sector to support policies and programs with the goal of educating communities to increase engagement while simultaneously helping to develop pathways for community members to participate in the water infrastructure workforce. Providing educational and career opportunities will have economic, social and environmental benefits to the water system as people working in the water sector can become trusted spokespeople for their organizations and help advocate for their community. Water agencies are especially recommended to educate the public and provide a pathway for career advancement. This will require hands-on training for youths in K-12 and certification programs to advance the careers and leadership opportunities for members in marginalized populations.

Additionally, educational and outreach materials need to be provided in a simple, comprehensive, and publicly available format. To better assist in this process, a list of helpful resources is included in the appendix.

Some examples of programs that engage communities in the water industry include the California Rural Water Association (CRWA) and the California African American Water Education Foundation (CAAWEF). The CRWA workforce program actively recruits high school students from marginalized populations for jobs in the water industry, provides scholarships to earn certifications to operate water infrastructure and helps with job placement opportunities. CAAWEF provides water education and leadership training in the African American community through information on water quality, rates, water supply and resource management.

Strategies for education and outreach should involve all levels of the community. This includes providing educational opportunities for elected officials to understand water issues in their communities. The Water Education for Latino Leaders (WELL) has developed the UnTapped Fellowship, which is a selective program that creates an opportunity for local elected officials to engage with water issues through a comprehensive exploration of history, governance, public policy, geography and economics and their relationship to human rights and climate change.

Education is the foundation for collaborative approaches to address water equity issues and provides a platform for community empowerment. Local water agencies should especially emphasize and implement educational and career opportunities for their communities. Providing programs to educate people on local water issues will help develop a pathway for them to become engaged leaders within their communities.



#### **Action 4: Water Governance Transparency**

Prepare and maintain an up-to-date list of local water board election opportunities (including dates, open board seats, and an overview of the process to run). Local water boards – which can be Community Services Districts or Public/Special Utility Districts, for example – advertise on their individual websites. While they are listed on county election websites, there is currently no central location where this information can be looked up by zip code or by board.

In California, there are several levels of water management ranging from the local water and sanitary sewer service providers to the State Water Board and the nine Regional Water Quality Control Boards (together, the California Water Boards). In addition, both the state and federal governments are involved in the management of the long-term water operations for the Central Valley Project (CVP) and State Water Project (SWP). Finding a way to meaningfully participate and engage in water management is convoluted.

The California Water Boards protect water quality. Additionally, under the State Water Board, the Division of Drinking Water regulates public drinking water systems and the Division of Water Rights allocates surface water rights under its jurisdiction. The Governor appoints members to the California Water Boards and vacancies are announced monthly. As of Sept. 20, 2021, there were eight vacancies including the Central Coastal, Colorado River Basin, Lahontan, North Coastal, San Francisco and Santa Ana regions. The appointment application is quite complex and without extensive education and experience, it is doubtful a community member would qualify for such positions.

In aims to enhance community engagement, the Regional Water Boards should add a non-voting board member to increase communication and transparency with local citizens and community members. The qualifications for this Community Adviser position can be adjusted to allow

knowledgeable individuals to participate without the extensive experience required for board-appointed positions.

A centralized, comprehensive tool housed at DWR to identify local water management structures would go a long way toward improving accessibility for marginalized populations. Understanding the local water governance structure and easily identifying the individuals with decision-making power in a specific area is critical in addressing problems with access to and affordability of safe drinking water. This tool should incorporate local utility districts, GSAs, sanitary service districts, irrigation districts and any other water management agency with duly elected or appointed officials along with information about the State Water Board's regional governance structure.





**RECOMMENDATION 3:** IDENTIFY AND SUPPORT PARTNERSHIPS BETWEEN NEIGHBORING, RELATED OR OTHERWISE INTERCONNECTED WATER SYSTEMS AND AGENCIES TO BEST MEET THEIR COMMUNITIES’ NEEDS.

The SAFER Program emphasizes consolidation and partnerships between water systems as a way to better serve those with unreliable, unsafe and/or unaffordable drinking water. The SAFER Program is making meaningful progress in reducing the number of Californians that lack access to safe and affordable drinking water, but there still exist several barriers to efficiently and effectively support regional partnerships that can enhance water access, equity and resilience. Moreover, there exist opportunities to better understand water system challenges that may be addressed through partnership or through targeted financial support, including for tribal water systems where drinking water needs assessment data are deficient. These actions are focused on addressing some of the barriers to water systems more reliably providing safe and affordable water on tap.



## **Action 1: Knox Cortese Hertzberg Act Section 5640 Subdivision (c) Amendment**

Amend Section 5640 subdivision (c) of the Knox Cortese Hertzberg Act to mandate LAFCo's review of agencies' compliance with the California Safe Drinking Water Act.

Municipal Service Reviews (MSRs) were added to each county's Local Agency Formation Commission's (LAFCo) mandate with the passage of the Cortese-Knox-Hertzberg Act (CKH) Local Government Reorganization Act of 2000 (Government Code § 56000 et seq). An MSR is a comprehensive study designed to better inform LAFCo, local agencies and the community about the provision of municipal services. MSRs are to be completed every five years and must be completed prior to, or in conjunction with, an update of a city or special district Sphere of Influence (a planning boundary outside of an agency's legal boundary that designates the agency's probable future boundary and service area) or before LAFCo initiates any reorganization of the boundaries of a special district. MSRs capture and analyze information about the governance structures and efficiencies of service providers and identify opportunities for greater coordination and cooperation between providers.

The MSR process does not require LAFCo to initiate changes of organization based on service review conclusions; it only requires that LAFCo make determinations regarding the provision of public services per the provisions of Government Code Section 56430. However, LAFCo, local agencies and the public may subsequently use the determinations and related analysis to consider whether to pursue changes to service delivery, government organization or spheres of influence.

When completing an MSR for each local agency or special district, the LAFCo must make determinations on each of the following issues:

- Growth and population projections for the affected area
- Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies
- Financial ability of agencies to provide services
- Status of, and opportunities for, shared facilities
- Accountability for community service needs, including governmental structure and operational efficiencies
- Any other matter related to effective or efficient service delivery, as required by commission policy

Pursuant to Government Code section 56430 subdivision (c), a LAFCo may, but is not required to, include a review of an agency's compliance with the California Safe Drinking Water Act. Given the human right to water as recognized by the Legislature and the minimal burden of LAFCo

compliance, it is recommended that when conducting an MSR for an agency with a public water system, LAFCo must include a review of the agency’s compliance with the California Safe Drinking Water Act. The specific legislative recommendation is to modify Government Code section 56430 subdivision (c) as follows:

“(c) In conducting a service review, the commission ~~may~~ **shall** include a review of whether the agencies under review, including any public water system as defined in Section 116275, are in compliance with the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code). A public water system may satisfy any request for information as to compliance with that act by submission of the consumer confidence of water quality report prepared by the public water system as provided by Section 116470 of the Health and Safety Code.”



### Action 2: Tribal Accessibility & Affordability

The State Water Board should work with tribal governments, Indian Health Services and the U.S. EPA to better include tribal water systems in future statewide drinking water needs assessments and identify opportunities for increased water accessibility and affordability on tribal lands.



*Related action regarding tribal government under SGMA: Modify DWR GSP Regulations 23 CCR § 355.4 subdivision (b)(4)--which identifies the criteria for GSP evaluation--as follows:*

*“Whether the interests of the beneficial uses and users of groundwater in the basin, including tribal governments, and the land uses and property interests potentially affected by the use of groundwater in the basin, have been considered.”*

Native American tribes have historically been excluded and marginalized in California, either through practice or by statute. Although steps have been taken to recognize the roles of tribal governments in California’s water supply, tribes are still marginalized or excluded through processes that are not specific enough to include

them. Federally recognized tribes have both federal authority, the ability to control their own affairs, and a right to both surface water and groundwater. However, tribes that are not recognized by the federal government do not have the same luxury.

The 2021 Drinking Water Needs Assessment results for Tribal Needs found that the state was unable to assess the needs of tribal water systems utilizing the same methodologies employed for evaluation of public water systems, state water systems and domestic wells. The Tribal Needs Assessment required an alternative methodology and was included as Appendix F, the very last item to be detailed, in the Needs Assessment. The Needs Assessment found that 13 tribal water systems of the 90 assessed (almost 14%) were in violation of the Human Right to Water compliance criteria identified by the state. Since tribal water systems in California are regulated by the U.S. EPA, the regulatory compliance constituents are different with different thresholds for compliance. This indicates a state-specific lens was placed over a federally regulated facility and therefore the results may not fit very well.

Alternatively, in pursuing the implementation of SGMA, a preliminary review of GSPs identified a lack of tribal coordination in almost two-thirds of the plans reviewed. When asked, 21 of the GSPs stated there were no tribes located in the GSP area. When asked how the determination was made, such as checking the state's California Native American Heritage Commission (NAHC) website, 19 of them provided no information. This would indicate that although tribal inclusion is required to be considered, and tribes have a reserved right to the groundwater on their sovereign land, they are not being engaged appropriately and there is no recourse for the lack of engagement on the part of a GSP.

Although strides are being made, the lack of specificity in tribal outreach and coordination requirements is creating a void where tribal voices should be heard. In order to ensure tribal outreach occurred appropriately, statute should include it as part of the review requirement for GSPs.



### **Action 3: Consolidation Guidance & Support**

The State Water Board SAFER Program staff should help water systems remove barriers to consolidation by 1) providing facilitation support; 2) providing clearer information on funding and incentives available; and 3) helping systems assess changes to water rates in the subsumed and receiving water system's communities.

The first "guiding principle for utility consolidation" that the USWA provides is to "focus on proactive, community-driven, and locally determined approaches to consolidation." (USWA 2019b.) Meaningful progress has been made to help prompt consolidation and regionalization through programs such as SAFER, but barriers to consolidation still abound, such as unwilling participants, contracting and purchasing limitations, complexity and uniqueness of each system, length of the process, liability concerns and lack of funding. As each consolidation process will be structured differently and depend on local conditions, the needs and concerns of each party will be unique and may change over time.

Availability of state-funded facilitation teams could help water systems navigate real or perceived challenges to carrying out consolidation, bringing together water systems and their communities to identify and develop plans to address their specific concerns. Carrying out these processes through facilitation support services can help consolidations be transparent and accountable to communities and emphasize engagement with marginalized populations. Facilitation support services can help consolidations be community-driven and may reduce the number of mandatory consolidation orders issued by the State Water Board and the number of administrators appointed for water systems.

Concerns about potential water rate changes and lack of understanding of available funding for consolidation are often barriers to water systems engaging in productive conversations about consolidation. The State Water Board SAFER Program staff and their consultants can help to reduce perceived financial barriers by providing clear guidance about available state funding, and by helping potential receiving water systems understand the incentives available for consolidation of a water system that serves a small, marginalized population. This guidance could take the form of a tool to provide a high-level estimate of the cost of constructing a pipeline to connect two water systems, identify what funding would be available for that project and assess any anticipated changes to existing water rates for both the subsumed and the receiving water system. Additionally, this tool could assess how consolidation incentives (e.g., zero-interest loans) can offset the cost of other planned capital projects that a receiving water system would need to fund itself through potential water rate increases. While this action focuses on physical consolidation, it would also be helpful to identify funding mechanisms for managerial consolidation or partnership actions that do not include construction projects.

In addition to helping water systems' staff and board understand potential costs of consolidation, the State Water Board SAFER Program staff should support systems in communicating with community members about potential changes to their water bills if their water system is subsumed or receives another system. Guidance and tools on a system level, described above, could be used to inform discussions about financial implications on an individual household or business level. This will be especially relevant if households reliant on domestic wells will receive service from a water system for the first time; it will be useful to help community members understand what their water bill will be used for and what operations, maintenance and capital costs must be incurred by a well-functioning water system. Communities served by underperforming small water systems may be paying more for lower quality service. In some cases, having detailed educational information about the benefits of improved water quality and water supply reliability alongside information on costs will help make clear the benefits of consolidation.

By providing guidance and tools to help receiving water systems and subsumed water systems understand the financial impacts of consolidation, the State Water Board SAFER Program staff can help lay the groundwork for more inclusive, productive and community-driven conversations about consolidation. Systems pursuing consolidation would also benefit from State Water Board staff support in navigating Proposition 218 processes to carry out water rates changes. Support

from staff would bring more opportunities to improve system resilience and household affordability through consolidation.



#### **Action 4: Strategic Regional Partnership for Increased Transparency & Accountability**

The State Water Board SAFER Program staff should work with high-performing large drinking water systems and surrounding communities to develop regional partnership strategies with an emphasis on transparency, accountability and community voice.

While physical consolidation may often be the best option for improving water service, a spectrum of water system partnerships exists that can cater to the needs and resources of potential partners. Managerial consolidation is an option where staffing challenges exist, but physical consolidation is unnecessary or undesired. In some cases, mutual aid agreements for support during emergencies, agreements for shared bookkeeping, or sharing a treatment or distribution operator can help strengthen water systems without the challenges of navigating full consolidation. Recognizing the spectrum of potential partnerships and supporting communities in deciding which options align best with their strengths and needs would help bolster the USWA “focus on proactive, community-driven, and locally-determined approaches.”

A recent Water Research Foundation report focused on identifying solutions for underperforming water systems states that: “California could resolve drinking water problems for as many as one-third of the state’s underserved residents through physical consolidation; as much as 90% of the underserved population could be reached through regional partnerships” (Feinstein et al, 2020). Regional partnerships have the potential to meet the needs of communities served by underperforming water systems and dependent on domestic wells, if the right support is mobilized. The State Water Board SAFER Program staff should develop regional partnership strategies with large high-performing water systems and their surrounding communities by:

- Identifying specific technical, managerial, financial, social and political (TMFSP) capacity challenges faced by underperforming water systems and households dependent on domestic wells in the vicinity of the high-performing water system of focus
- Identifying and addressing specific concerns community members may have about partnership (e.g., lost autonomy, increase in water rates, etc.)
- Identifying resources (e.g., skilled staff, bookkeeping systems, etc.) of the high-performing water system that may be leveraged over a wider geography, that align with TMFSP capacity needs of their neighbors

- Identifying financial support for high-performing systems to leverage resources in support of their neighbors.



**RECOMMENDATION 4: FOCUS MECHANISMS SUCH AS FUNDING, POLICY AND PROGRAMS ON ACCESSIBILITY TO SAFE DRINKING WATER FOR MARGINALIZED POPULATIONS.**

**Marginalized populations often need assistance to stay up-to-date with water project funding opportunities. The actions to implement this policy recommendation focus on making funding, policy and programs more accessible to marginalized populations by rebranding and marketing of existing funding resources, revising funding eligibility requirements, developing a methodology for review and guidance of water supplier funding mechanisms and utilizing existing funding sources to leverage technical assistance providers.**





## Action 1: Increase Awareness of Existing Funding Resources

Focus on rebranding and marketing of existing funding resources to increase awareness of available platforms, and to offer a mechanism for direct engagement between state agencies, special districts, tribal organizations and other entities with interested and at-risk community members seeking funding options.

The federal government, state of California, several local governments and organizations have dedicated considerable time, money and other technical assistance meant to support marginalized populations regarding health and resource accessibility issues. Some of the latest examples include the federal Justice40 Initiative – with a portion of funding meant to improve drinking water quality, prevent contamination and support water systems – the California state budget providing around \$1.3 billion for drinking water and wastewater investments in marginalized populations, and the state’s continuing support of the SADW Fund. In most cases, these funds are distributed to small communities and marginalized populations for developments through various grants, loans and other financial assistance programs. Each program has its own eligibility criteria, administrative and reporting requirements, among other provisions.

Marginalized populations face some challenges similar to larger communities regarding procurement of funds; however, they are often further limited by inadequate expertise and coordination. As such, it often becomes difficult to match interested and marginalized populations with funding options that may best suit their needs, especially when they may not be directly eligible for these options (e.g., public water supplier eligibility for some state grant funds). Several organizations, as well as some state and federal agencies, have built platforms, web tools and other resources to assist interested and marginalized populations to better understand and find available funding options. Some examples include:

- *California Grants Portal*, a project by the California State Library, to find all state grants and loans offered on a competitive or first-come first-served basis
- *California Financing Coordination Committee (CFCC)* combines the resources of state and federal funding agencies to increase awareness of available grants, loans and bond funding for infrastructure projects via ‘Funding Fair’ events
- *Funding Navigation for California Communities*, by the Local Government Commission, categorizes and details funding opportunities for local governments and communities. It also offers technical assistance and other resources to assist communities in pursuing funding opportunities.

Marginalized populations’ access to funding opportunities is often a matter of awareness of the available opportunities. While these and other tools often provide great insight into funding eligibility, requirements and other provisions, they generally do not offer a mechanism for direct engagement between communities, their water suppliers (either current or within their sphere of influence), and the grantor agencies. If community members organize around a project need, they may not be in the best position to develop the tools and information required to apply, and

their project need may or may not be consistent with local governments and water supplier priorities. Additionally, knowledge of these resources is often limited to communities that have an active record of obtaining funds, which while beneficial, may not always reflect the most marginalized populations.

Re-branding and marketing of these and other available resources, existing tools and platforms to reach a wider audience will be key to ensuring dedicated program funds ultimately reach their intended communities. Examples include more broad and accessible websites and web tools, more frequent and public-facing engagement events (e.g., broader CFCC Funding Fairs), and partnerships between existing platforms to consolidate information aimed at better matching eligible funding sources with interested community members. More emphasis should also be placed on direct engagement and outreach meetings as opportunities become available. Grantors should lead awareness campaigns for the groups they are targeting. Where practical, the grantors should also partner with and support well-established organizations that have the trust of community members and are already leading efforts to increase awareness of funding and technical assistance options.



## **Action 2: Develop Inclusive Funding Resources & Eligibility Requirements**

Revise funding eligibility requirements to allow local and regional organizations to designate locally applicable marginalized populations to receive disadvantaged community-dedicated funds.

Beyond awareness of available funding options, it is worth noting that the language used to define targeted marginalized populations also is crucial to connecting them to available funding and technical assistance. Emphasis has been placed on how best to define these groups in a way that is inclusive, non-offensive, and yet recognizes the past and present conditions as marginalized populations. How these groups are defined ultimately dictates their access to or prioritization for available resources.

The state of California has adopted multiple terms aimed at targeting these communities in its various grant and loan program funds, such as “Disadvantaged Communities” (DACs) or “Disadvantaged Unincorporated Communities” (DUCs). However, these terms are often built on firm and measured criteria that may not be fully inclusive of groups they are targeting (e.g., median household income metrics for designating DACs). Rather than a top-down approach to defining these communities, the following recommendation is offered that allows the groups to better define their interests:

*Recognize revised term of “marginalized populations” to include applicable communities, areas, groups, entities, and/or persons as identified by local and regional organizations in California. The designation of marginalized populations shall follow a study and review process by appropriate state agencies, thereby making them open to funding in place of current disadvantaged community dedicated funds. Moreover, once approved for*

marginalized populations *status, these areas shall remain consistent across state agencies, organizations, funding opportunities, etc.*

The proposed structure for defining marginalized populations is analogous to the Region Acceptance Process used to establish the IRWM Program regions, or the process implemented by DWR to establish GSAs under SGMA. However, unlike these defined regional entities developed under IRWM or SGMA, the marginalized populations term must be more fluid to better capture marginalized populations (e.g., homeless populations in urban areas, disadvantaged rural secluded areas). In this sense, the local and regional organizations are in the best position to define their applicable marginalized populations to improve access to funding and technical assistance. Once established, marginalized populations outreach and equitable resource distribution for drinking water sustainability should be directly incorporated into grant and loan funding program requirements.



**Action 3: Develop a methodology for review, guidance and tracking of water supplier funding mechanisms to make accessibility easier for marginalized populations.**

California should develop a methodology for review and guidance of water supplier funding mechanisms, including emergency drought relief, bond funding, etc., to ensure the potential of projects, programs and budgets to achieve sustainable, long-term solutions for marginalized populations.

Policies and programs in California such as SAFER, Proposition 1, Proposition 84, etc. are aimed at providing funding and resources to marginalized populations. However, there is a need for long-term dedicated funding for work with marginalized populations; community members in marginalized populations may lack the staff and expertise to properly manage government grants, with all the requirements of transparency, documentation and accountability. Marginalized populations face numerous challenges that can impede strategic planning and continuity needed to see a grant-funded project to its end. Even with new facilities and equipment, marginalized populations will continue to face challenges in making their water systems sustainable, including having the resources and personnel to operate a water system, oversee its governance and stabilize its finances. (*Water Education Foundation; Solving Water Challenges in Disadvantaged Communities: A Handbook to Understanding the Issues in California and Best Practices for Engagement.*)

To ensure funding and resources are more accessible to marginalized populations and water projects and programs are most effective, the state should:

- Adopt a standardized “report card” or similar grading mechanism for proposed water projects that would be required for all state grant and loan awards, based on review of water equity, marginalized populations’ drinking water need assessment(s) and ability to maintain infrastructure and availability of funding.
- Ensure existing grant and loan funds applied to marginalized populations-focused projects and programs are capable of meeting long-term operational and other emergency

funding needs post-construction. This can be done by ensuring applications adequately address long-term funding needs (e.g., a 10-year coverage projection of project and/or program funding needs). This can be supplemented by increasing grant and loan fund opportunities to cover certain emergency, long-term operation and maintenance expenditures.

Incorporating clear criteria for equity allocations in funding measures, formal evaluation to measure outcomes and oversight to safeguard equity provisions will help ensure marginalized populations have access to funding and resources to produce increased project benefits.



#### **Action 4: Leverage Existing Funding to Empower Marginalized Populations & Ensure Sustainable Water Accessibility Solutions**

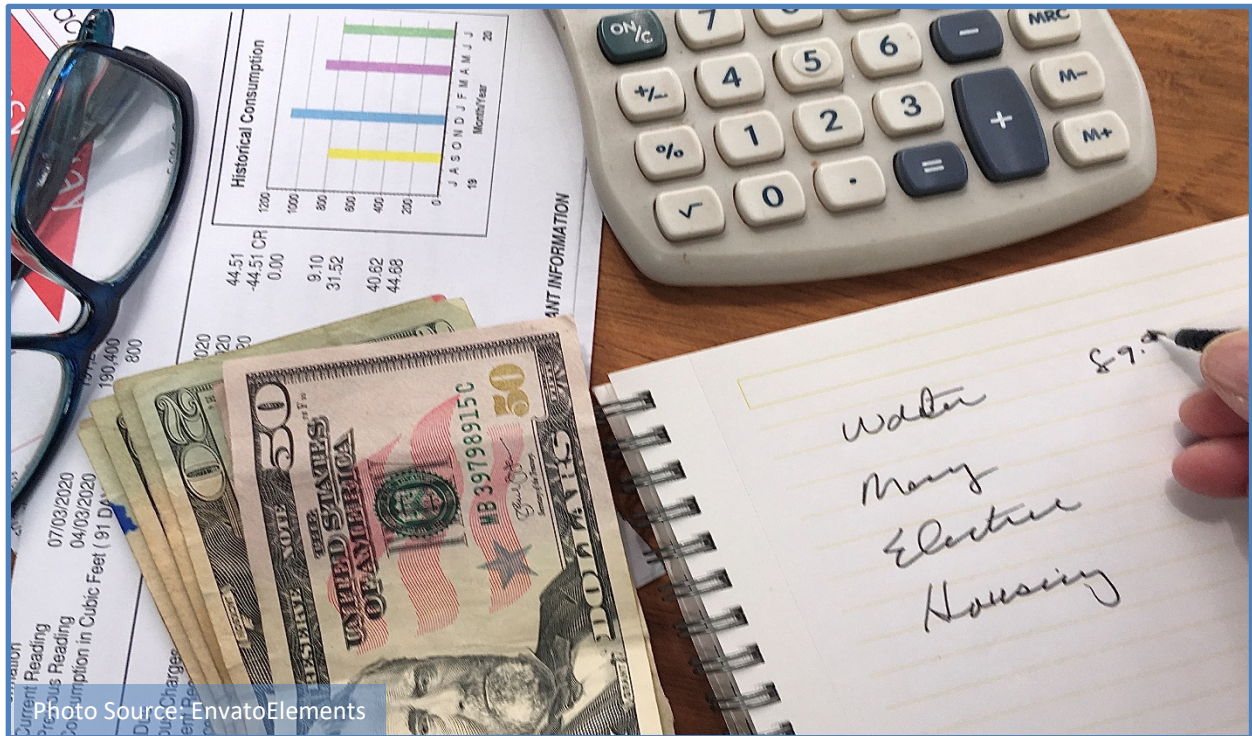
To commence implementation of Actions 1-3, the state should utilize existing funding sources and leverage technical assistance providers to empower marginalized populations to implement long-term, sustainable solutions that safeguard water accessibility.

The State Water Board's Office of Sustainable Water Solutions (OSWS) under the Board's Division of Financial Assistance (DFA) consolidates administration of the state's grant funding programs. This includes administration of the SADW Fund, as well as other funding sources that are part of the broader SAFER Program. OSWS also administers the state's general fund appropriations, general obligation bond funds, and funding available through other programs such as the Drinking Water State Revolving Fund (DWSRF) capitalization grants and the Clean Water State Revolving Fund (CWSRF). However, only a small subset of these funds, namely the SADW Fund and Proposition 1 Bond Funds, authorize expenditures on technical assistance (TA) for marginalized populations (State Water Board 2021e, State Water Board 2021f).

TA is provided through statewide and regional designated providers, such as regional nonprofit organizations and universities that represent the interests of marginalized populations and are funded through State Water Board contracts. Effective TA providers play a critical role in the development of sustainable solutions to benefit marginalized populations. (Green Nylén, N., C. Pannu and M. Kiparsky 2018.) They provide expedited planning services, build local capacity and develop solutions tailored to the interests of marginalized populations. Funding is distributed to nonprofit organizations representing marginalized populations to build local and regional capacity and to obtain critical engagement from marginalized populations that have the opportunity to work directly and collaboratively with TA providers. (Water Education Foundation 2020.) These providers are well positioned to engage with marginalized populations to develop collaborative solutions for long-term sustainable management of public water systems, small water systems, and domestic well projects. TA providers are also well positioned to deploy resources that ensure marginalized populations and nongovernmental organizations receive the

training, education and skills to continue the technical, managerial and financial (TMF) aspects of water system operations after project completion.

OSWS should leverage SADW Funding and Proposition 1 Bond Funds to fund TA providers that promote collaborative local solutions for marginalized populations while building institutional knowledge and capacity to deliver long-term sustainable solutions to safeguard accessible water supplies for these communities. Further, to ensure marginalized populations have access to other funding opportunities, the OSWS could allocate additional funding to facilitate TA providers helping marginalized populations and nongovernmental organizations secure additional funding from other grant programs without dedicated TA funding. This strategy would help develop marginalized populations' capacity to work with TA providers to secure additional funding from the state general fund and general obligation bonds to implement effective, multi-benefit, community-based solutions that ensure long-term water accessibility for marginalized populations.



**RECOMMENDATION 5:** THE STATE AND LOCAL GOVERNMENTS SHOULD CREATE FUNDING MECHANISMS AND REMOVE BARRIERS TO SUPPORT AFFORDABLE WATER FOR LOW-INCOME HOUSEHOLDS AND MARGINALIZED POPULATIONS CONNECTED TO RELIABLE WATER SYSTEMS THROUGH LEGISLATIVE ACTION AND CONSTITUTIONAL REFORM.

This recommendation addresses marginalized populations, low-income households and sovereign tribes already connected to safe and reliable water systems, but which lack the ability to pay for that access. Restructuring water rates and statewide funding mechanisms could help, but structural impediments like Proposition 218 limit opportunity to make drinking water affordable. In addition to addressing structural impediments, a number of other statutory and administrative changes could lower the fixed costs and make water significantly more affordable for marginalized populations while also ensuring water systems are able to recover the cost of services and maintain infrastructure to ensure the long-term viability of their systems. It is incumbent upon those with the power and authority, the state Legislature, governor’s office, public water agencies, and all conscientious Californians who support safe and affordable clean water for all, to move forward with these changes and finally realize our collective goal of the human right to water.



### **Action 1: Implement a Statewide Water Rate Assistance Program**

The Legislature should enact, and the Governor should sign, implement and fully fund SB 222 (Dodd 2021) to create a water rate assistance program for low-income California residents.

In 2015, then-Assemblymember Bill Dodd introduced AB 401, which directed the State Water Board to create a plan for a statewide water affordability program (California State Legislature 2015). In February 2020, the State Water Board released its final report (State Water Board 2020). In January 2021, in follow-up to the recommendations in that report, Senator Dodd introduced SB 222, which is intended to implement the recommendations of the State Water Board. SB 222 did not fully gain support from both houses of the Legislature to reach the governor's office for signing. However, the sheer volume of household debt accumulated during the pandemic demonstrates the necessity of a water rate assistance program in California. Further, California has affordability programs in place for most other utilities, including electricity, gas and even cell phones; however, it lacks a corresponding program for water (California Assembly Committee on Environmental Safety and Toxic Materials 2021).

The Legislature should amend SB 222 to include an urgency clause allowing it to go into immediate effect and the governor should immediately sign the bill into law. Although SB 222 would establish a water rate assistance program, the bill does not identify a funding source (California State Legislature 2021). The Legislature should fully fund the program on an ongoing basis through the state's general fund or another progressive funding source in the 2022-23 budget process. Additionally, the California federal delegation should advocate for federal funding to augment the state program. Finally, state agencies should streamline SB 222 implementation to reduce hurdles to potential participants.



### **Action 2: Authorize & Require Water Rate Discount Programs**

The Legislature should pass or a citizens group should initiate and place on the ballot an amendment to Proposition 218 that would allow water agencies to provide discounted rates to qualified customers.

Proposition 218 looms large in any discussion about water equity. Ratified in 1996, Proposition 218 aimed to close perceived loopholes on assessments, fees and charges by adding Articles XIII C and XIII D to the California Constitution. That amendment requires proportionality, which as explained demands that a fee or charge not exceed the reasonable cost of the proportional special benefit conferred on a parcel.

By design, this proportionality requirement makes achieving equitably priced water challenging. When proposed in 1996, voters knew that Proposition 218 would “make it difficult for local government to continue certain programs, such as those that offer reduced rates to low-income residents” (Legislative Analyst's Office, Understanding Proposition 218, at 30 (1996)).

There should be a constitutional amendment to reflect the human right to water priority. The Legislature should pass or a citizen group should initiate and place a legislative constitutional amendment on the ballot that would amend the California Constitution to create a carve-out to Proposition 218's prohibition on cross-subsidies for water agencies. This carve-out would confirm that water agencies may provide a discounted rate to qualified customers by using revenue collected from rate-paying water customers. A limited constitutional amendment creating clear authority for water agencies to help lower-income customers would provide those agencies with a significant tool in distributing water equitably.



### **Action 3: Use of General Revenues for Water Rate Discount Programs**

Public water agencies with non-dues revenue should collect and use general revenues on water rate discount programs. The Legislature should amend Proposition 218 and/or enact legislation clarifying that water agencies can use lease revenues for general purposes.

Affordability programs are designed to assist customers who cannot pay for water services. Under existing legislation, utilities have the option, but not the obligation, to establish assistance programs to address affordability challenges in their service area. According to the American Water Works Association's (AWWA) Manual of Water Supply Practices, assistance programs for low-income customers typically involve programmatic support efforts, such as assistance conducting water audits, water-use efficiency improvements and rate and bill discounts (AWWA 2017). Assistance programs that reduce the financial impacts for customers, however, result in lost revenue for the utilities. This lost income may place a financial burden on water utilities because they depend on revenue from ratepayers to recover the cost of services. These costs include water treatment and delivery costs, and cover infrastructure needs that ensure the long-term sustainability of their water systems.

Utilities can generate revenue that is not derived from the sale of water. These non-operating revenues can include local tax revenues for municipal utilities and special districts, interest income and other items. Utilities can also earn rental income by leasing or renting operating utility property and equipment (e.g., cell phone and internet providers may rent a water utility's towers or tanks). AWWA notes that, for some service providers, this rental income has become a discrete source of revenue that is used to finance assistance programs. (AWWA 2017.) However, in 2021, the California Department of Housing and Community Development issued guidelines for the Surplus Land Act that added additional regulatory hurdles for agencies entering into leases to bring in additional non-ratepayer revenue. Furthermore, according to the Pacific Institute, some water utilities are concerned that water affordability programs may result in legal challenges due to provisions in Proposition 218 (Pacific Institute N.d.). To provide further assurance that these affordability programs comply with Proposition 218, the Legislature should amend Proposition 218 and/or enact legislation explicitly stating that water agencies can use rental income to fund water assistance programs in perpetuity.





#### **Action 4: Increase Infrastructure Investment Allocation & Strategically Target Distribution to Disadvantaged Communities, Marginalized Populations and Tribes**

The state should increase investment in infrastructure improvements in order to lower the fixed cost of water service and press the federal government to do the same. Investments should focus on systems where the majority of those served meet the statutory definition of disadvantaged and severely disadvantaged communities, with a dedicated percentage allocated for and going directly to tribes without first passing through state agencies. These monetary resources should be grants, rather than loans, and not include a matching requirement, nor for any portion to be paid for up-front by localities or tribes. A portion should be reserved to build capacity for tribes that, via application, express interest in obtaining Treatment as a State (TAS) designation for purposes of obtaining primacy for programs under the Safe Drinking Water Act.

Customer water bills commonly are divided between a fixed fee (base) and a variable fee (volumetric). Drinking water customers and utilities have some leeway in reducing the variable cost of water, commonly charged via increasing block rates: customers can conserve water and utilities can diversify their water portfolio. However, fixed charges reflect constant expenses that cover maintenance and operations and repayment of loans and bonds used for capital infrastructure investment. California law provides flexibility regarding the actual percentage of revenue collected from fixed versus variable rates, and actual cost recovery can vary up to as much as 40-50% (California Water Code 2019a; City of Santa Monica 2019; City of Orange 2017.)

According to the Public Policy Institute of California (PPIC), most drinking water system infrastructure funding is paid by local utilities at 84%, with the balance paid by state and federal contributions at 13% and 3%, respectively. This funding totals \$37 billion annually, with water supply and water quality needs accounting for \$19.9 billion and \$12.7 billion, respectively (PPIC 2021a). Consequently, increasing state and federal funding for infrastructure improvements will lower local water utility costs, which means fewer costs are passed on to customers to recover expenses. The alternative for many utilities is to defer upgrades, which results in even higher costs for health, safety and maintenance in the future. Thus, the state should increase investment in infrastructure improvements to lower the fixed cost of water service while pressing the federal government to do the same.

The increase in water bills to keep pace with infrastructure updates disproportionately impacts low-income households, especially those customers served by smaller systems that cannot take advantage of economies of scale (PPIC 2021b). Accordingly, investments should focus on systems where the majority of those served meet the statutory definition of disadvantaged and severely disadvantaged communities.

Providing funding via loans—even low-interest loans, such as through the State Revolving Fund program—does not alleviate the burden of high fixed costs, as these loans are ultimately repaid by the customer. Matching requirements are particularly prohibitive for small and tribal drinking water systems. Funding for disadvantaged communities and tribes should be provided in the form of grants with no waiting period, up-front funding or matching requirements to ensure

these communities have access to the infrastructure funding they need. A dedicated percentage of this increased funding should be allocated for and go directly to tribes without passing first through state agencies.

Ninety tribal water systems in California serve more than 160,000 people (U.S. EPA 2020). While the Safe Drinking Water Act authorizes tribes to be treated as states and assume primacy over the Public Water System Supervision (PWSS) program, no California tribe has obtained primacy. U.S. EPA (Region 9), and not the state, is responsible for regulating water quality on tribal lands. Further, water districts may extend service to a tribe's lands and water infrastructure, upon request and under certain conditions, without annexation (Water Code §71611.5).

As discussed in Policy Recommendation 3, Action 2, the State Water Board's 2021 Drinking Water Needs Assessment found 13 Human Right to Water list tribal-equivalent systems. Those systems represent a population of 17,400 people, plus 22 tribal community water systems considered "at-risk" equivalents. The report estimated capital costs to address these systems' needs at \$98.3 million, although only two had U.S. EPA funding projects in progress to address existing violations (State Water Board 2021f).

U.S. EPA can make grants to tribes interested in developing and carrying out PWSS programs, including to capacity development leading to assumption of primacy. The final allotment for the FY 2021 PWSS State and Tribal Support Program Grants was \$112 million, with total Tribal PWSS Program Support at \$7.2 million (including a \$6.6 million base grant) (U.S. EPA 2021). Other grants are available via the Indian Health Service and U.S. Department of Agriculture. Some state funding is available to tribes, such as through the Safe and Affordable Funding for Equity and Resilience. Given these opportunities for funding, more funding should be made available and reserved to build capacity for tribes that, via application, express interest in obtaining TAS designation for obtaining primacy for programs under the Safe Drinking Water Act.



### **Action 5: Implement Water Service Protections**

To increase water service protections for low-income households, the Legislature should amend statutes to aid public water systems moving fixed water service costs to property tax rolls and increase protections for low-income households against water shutoffs.

The Legislature should aid public water systems moving fixed water service costs to property tax rolls to reduce cost burden on renters. Additionally, moving the fixed water service costs to property tax rolls contributes to a regular, reliable funding source for public water systems. Tax collectors also can enforce non-payments through property liens instead of water shutoffs. Adding or increasing water fees on property tax rolls is allowed without voter approval (California Constitution, article XIII D, section 6, subdivision (c)). However, California Health and Safety Code sections pertaining to setting and collecting fees for water and wastewater services, including moving costs to tax rolls, predominantly address wastewater services. While it has been clearly established that these statutes also apply to water providers, the Legislature should amend

Health and Safety Code sections 5470-5474.10 and 6520.5 to explicitly grant entities solely providing water services the ability to move fixed costs to tax rolls.

*For example, modify Health and Safety Code section 5470 –which defines terms for Sanitation and Sewerage System criteria – as follows:*

*“Entity. ‘Entity’ means and includes counties, cities and counties, cities, sanitary districts, county sanitation districts, county service areas, sewer maintenance districts, **water districts**, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers, ~~and~~ sewerage systems, **and water systems.**”*

Additionally, the Legislature should increase protections for low-income households against water shutoffs. During the COVID-19 pandemic, Governor Gavin Newsom issued Executive Order N-42-20, which suspended public water systems’ ability to disconnect water service to residences. The Legislature should apply principles from Executive Order N-42-20 to Health and Safety Code section 116910 by requiring that public water systems not discontinue residential water service for nonpayment of a delinquent account for those customers deemed financially unable to pay as defined in section 116910(a)(2). Public water systems should maintain the ability to terminate service for customers that are financially able to pay. Additionally, in alignment with the human right to water (Water Code section 106.3), the Legislature should delete or revise Health and Safety Code section 116910(a)(1) such that residential customers deemed financially unable to pay do not have to demonstrate that water service discontinuation would pose serious health and safety risks. To protect public water systems, the amendments could specify when shutoffs are acceptable (e.g., egregious unreasonable use of water, direct threat of potential backflow due to identification of a direct cross connection or failed backflow device that is not promptly corrected).

*Delete Health and Safety Code section 116910(a)(1) – which identifies the conditions for when an urban and community water system cannot discontinue service for nonpayment – as follows:*

*~~“(1) The customer, or a tenant of the customer, submits to the urban and community water system the certification of a primary care provider, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (b) of Section 14088 of the Welfare and Institutions Code, that discontinuation of residential service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential service is provided.”~~*



Photo Source: EnvatoElements

## Conclusion

Many leaders and organizations in California publicly recognize that achieving water equity for marginalized populations is critical. Despite some progress to that end, these challenges demand a more thoughtful and concerted effort. Paramount among these efforts is better incorporating the voices and needs of marginalized populations. Though many state and local decision-making processes already consider the input of organizations representing marginalized populations, the people from those marginalized populations still are not adequately engaged or included in the decision-making process. It is incumbent upon those in positions of power – elected leaders, government officials and advocacy organizations – to re-evaluate how to include marginalized populations before they make significant policy decisions.

As this report acknowledged earlier, this report's authors are not in a position to truly understand the challenges that marginalized populations face. Nor are the authors able to determine the best ways to solve those challenges. This report thus intends to offer only guidelines that leaders may refer to as they work toward a more equitable future. The solutions, however, must be developed with significant input from the people in marginalized populations across the state. Moreover, as leaders engage with marginalized populations to overcome this barrier in true understanding, three statements must inform their decision-making process moving forward:

- 1. Marginalized populations must drive the decision-making process.**
- 2. Everyone in California has a right to safe and affordable water, and marginalized populations lack access and the ability to pay.**
- 3. California decision-makers have a moral duty to address systemic water inequities.**

With these statements in mind, this report makes five recommendations for addressing water inequity. Each is substantial on its own. But overcoming water equity's largest hurdles requires

their combined effect. In addition, since many of the recommended actions depend on one another for success, each should be considered and addressed. With reference to these guidelines and suggested recommendations, leaders thus may empower and lead with marginalized populations in defining the problems and driving the solutions for achieving water equity.

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# APPENDIX

## Centralized List of Helpful Resources

[The California African America Water Education Foundation](#) provides water education and leadership training in the African American community through information on water quality, rates, supply and resource management.

[California Rural Water Association](#) provides free technical training for rural water systems.

[Citizens Water Academy](#) provides an opportunity for emerging civic leaders to learn about visionary local efforts to ensure a safe and reliable water supply for the San Diego region. Participants get an in-depth look at how the Water Authority helps the region's economy and quality of life through strategic planning, innovative programs, and cost-effective investments.

[Environmental Justice Coalition for Water](#) provides a network of support and expertise to environmental justice communities working on water issues throughout the state.

[The National Tribal Drinking Water Operator Certification Program](#) established by the United States Environmental Protection Agency (EPA) provides certification opportunities for personnel operating public drinking water systems in Indian country. EPA's National Tribal Drinking Water Operator Certification Program offers certification at no cost to water system personnel.

[Metropolitan Water District of Southern California](#) in partnership with many other water, educational, business, trade and community agencies, supports workforce development initiatives to prepare Southern California's young people for career and college pathways into the water industry.

[The Mono Basin Outdoor Education Center program](#) connects youth with the source of their water through multi-day trips to Mono Lake that focus on watershed education through hands-on learning and stewardship activities. Through a combination of curriculum-based education, outdoor activities and restoration projects, the OEC program teaches participants about watersheds and ways they can be impacted by human activities.

[National Environmental Services Center](#) provides technical information, advice and a free magazine called On Tap.

[The Rural Community Assistance Corporation](#) provides free training and resources for rural drinking water and wastewater systems.

[The United States Environmental Protection Agency \(EPA\)](#) provides assistance on a wide range of issues regarding safe drinking water.

[Water Education for Latino Leaders \(WELL\) Toolkit](#) provides helpful websites, books, podcasts, blogs and organizations about water in California.

[The WELL UnTapped Fellowship](#) is a selective program from the Water Education for Latino Leaders (WELL) that creates an opportunity for local elected officials to engage with water issues through a comprehensive exploration of history, governance, public policy, geography and economics and their relationship to human rights and climate change.

[Wholly H2O](#) hosts community events and develops educational programs to engage Californians in citizen science, art exhibitions and green infrastructure. It encourages California residents to become engaged members of their watersheds and active stewards of watershed ecosystems. They foster responsible, community-minded watershed management by nurturing the connections people make with their local watersheds. Their educational programs strive to make watershed conservation accessible and fun for all ages.