

***SUMMARY REPORT:***

**CONVENING  
ON THE IMPLEMENTATION  
OF THE HUMAN RIGHT TO WATER  
(AB 685)**

**November 2013**

**BerkeleyLaw**

UNIVERSITY OF CALIFORNIA

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International Human  
Rights Law Clinic

**International Human Rights Law Clinic  
University of California, Berkeley, School of Law.**

*The International Human Rights Law Clinic (IHRLC) designs and implements innovative human rights projects to advance the struggle for justice on behalf of individuals and marginalized communities through advocacy, research, and policy development. In May 2012, the IHRLC published the report, “The Human Right to Water Bill in California: An Implementation Framework for State Agencies.” The goal of the report was to place AB 685 in the context of water policy in California, explore its scope and meaning, and identify guiding principles for implementation efforts. The IHRLC has worked with the Safe Water Alliance and the United Nations’ Special Rapporteur on the human right to safe drinking water and sanitation in researching the implications of AB 685. The IHRLC has also briefed legislative staff and representatives from state agencies on this issue.*

*For more information, please visit: [www.humanrightsclinic.org](http://www.humanrightsclinic.org).*

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## **I. INTRODUCTION**

This report presents the major points of discussion from the Convening on the Implementation of the Human Right to Water (AB 685) held on November 12, 2013 in Sacramento, California.<sup>1</sup> The Convening was organized by the International Human Rights Law Clinic at U.C. Berkeley School of Law and sought the input of diverse participants to develop a common understanding of the meaning of AB 685 and advance a coordinated and consistent approach to its implementation.

AB 685 declares the right of every Californian to safe, clean, affordable, and accessible water adequate for human consumption. The law calls on all relevant state agencies to consider the human right to water “when revising, adopting, or establishing policies, regulations, and grant criteria” relevant to domestic water uses.<sup>2</sup> The Convening was held just after the first anniversary of the bill being signed in to law to foster a discussion among relevant stakeholders regarding implementation efforts by state agencies.

### **The primary objectives of the Convening were:**

1. To foster a discussion among key stakeholders about the implementation of the human right to water.
2. To examine the scope and meaning of the Human Right to Water law.
3. To address common challenges in fulfilling the duties and obligations established by AB 685.
4. To identify strategies for effective implementation of AB 685.
5. To further the development of a proactive, comprehensive, and integrated approach to AB 685 implementation.

Representatives from state agencies in attendance included: the Department of Water Resources (DWR), the State Water Resources Control Board (SWRCB), the California Public Utilities Commission (CPUC), the California Department of Public Health (CDPH), and California’s Environmental Protection Agency (Cal/EPA), among others. Representatives from the Governor’s Office, legislative offices, and regional water boards were also in attendance. Finally, leading community experts from Food & Water Watch, the Environmental Justice Coalition for Water, and the Community Water Center, as well as community residents participated as speakers and panelists.

Through a combination of presentations and discussions, the Convening aimed to facilitate a grounded and open discussion resulting in tangible guidance for implementation. The Convening consisted of two panels and a working session. (See Appendix B) The first two panels were designed to identify the range of agencies that fall within AB 685’s purview and the actions which trigger the duty to consider the

human right to water, as well as to clarify the scope and exceptions to this obligation. With a common understanding of the meaning of the legislation, the final session then shifted to a grounded discussion intended to develop strategies for the advancement of the human right to water through an on-going and dynamic implementation process.

This report includes a summary of the discussion as well as an implementation tool developed by the Convening organizers which reflects comments from the proceedings and follow-up discussions with attendees. (See Appendix C)

## **II. BACKGROUND**

On September 25, 2012, California became the first state in the nation to legislatively recognize the human right to water. Governor Jerry Brown signed into law Assembly Bill 685 (Eng), which declares that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” AB 685 places the human right to water at the center of state water policy and focuses a diffuse water governance structure on this central goal.

While California has a long history of enacting laws and regulations to protect drinking water, 21 million Californians live in communities affected by contaminated water.<sup>3</sup> AB 685 represents the strongest articulation of the state’s commitment to safe and affordable drinking water and underscores the role of state agencies in addressing the human impact of unsafe water.

AB 685 requires all relevant state agencies to consider the human right to water “when revising, adopting, or establishing policies, regulations, and grant criteria” relevant to domestic water uses.<sup>4</sup> However, AB 685 is limited in its application. It directly applies to state agencies, exempts public water systems and local governments from its purview, and does not create an individual cause of action or require additional expenditures. Additionally, AB 685 provides little regulatory guidance for implementation.

In its first year since enactment, state agencies have taken significant steps to implement AB 685. The SWRCB, for example, has recommended tightening controls on the discharge of groundwater contaminants in consideration of the health impact of unsafe water.<sup>5</sup> Cal/EPA has considered AB 685 in discussing the disclosure of private wells locations.<sup>6</sup> Finally, the multi-agency taskforce drafting the California Water Plan Update 2013 has referred to AB 685 in identifying policy objectives.<sup>7</sup>

While individual agencies have considered AB 685 in the development of policies and programs, a coordinated and consistent approach to implementation has yet to develop. The Convening provided an opportunity for agency and community representatives to explore how California’s most pressing water issues can be addressed through a comprehensive and integrated approach to AB 685 implementation.

### **III. INSIGHTS, PRESENTATIONS, AND DISCUSSIONS**

The Convening drew relevant representatives from eleven different state agencies, as well as the governor’s office, legislative staff, and community representatives. Speakers and participants identified the significant challenges facing some California communities, highlighted effective policies and practices currently in place, and suggested strategies for deepening implementation efforts by state agencies. Introductory speakers discussed the need for an integrated approach to achieving AB 685’s policy objectives of safe, clean, affordable, and accessible water, as opposed to a mechanical application of the bill’s mandate. The Convening was arranged into three interrelated segments:

Panel One — *Critical Junctures in AB 685 Implementation*. Representatives from the EJCW, the CPUC, and the SWRCB provided insight into how and when the duty to consider the human right to water is triggered through discussion of various state agency projects, and the scope and exceptions to this obligation through a discussion of recent policy initiatives.

Panel Two — *Shaping Water Policy Through AB 685*. Representatives from the DWR and the CDPH discussed various aspects of the human right to water — quality, affordability, and accessibility — and how these state agencies are currently integrating these principles in to their respective policies and practices, as well as plans for additional programs to address these types of water challenges in the future.

Working Session — *Developing an Implementation Tool for State Agencies*. The session began with comments from a consultant with Food & Water Watch and a general discussion of the challenges and opportunities facing agencies with regard to implementation of AB 685. The session then shifted to a moderated discussion about the framework outlined in a draft implementation tool prepared by Convening organizers. Participants provided input on the draft tool and shared ideas about how state agencies can further AB 685 implementation efforts.

Comments and discussion points from the three sessions are captured below and grouped thematically.

#### **A. ASPECTS OF THE HUMAN RIGHT TO WATER**

AB 685 articulates the right of all Californians to “safe, clean, affordable, and accessible water adequate for human consumption.” Throughout the Convening, panelists and participants discussed serious challenges facing many residents, including quality, affordability, and accessibility issues. Several agency programs and initiatives were raised as specific examples of how state agencies can integrate the objectives of AB 685 into their respective policies, guidelines, and practices.

## **1. Affordability and Access to Drinking Water**

Affordability was identified as a challenge in accessing clean and safe drinking water. Participants focused on affordability issues concerning two distinct factors: 1) the cost of water supplied by water service providers, and 2) community access to funding for water quality and infrastructure projects that in turn substantially impacts the affordability of water services in the community.

Panelists discussed several projects meant to address affordability issues as well as remaining barriers to affordable drinking water. While water rates are generally subject to regulation, important gaps in the regulatory framework exist. One participant pointed to AB 1830, under which the CPUC can only address rate issues and the adequacy of services in mobile home parks when residents representing 10% of those water service connections file a complaint.<sup>8</sup> This “pop-up” jurisdiction was described as limiting the agency’s authority to determine whether the rates are just and reasonable. It was noted that communities which fall entirely outside of the CPUC’s jurisdiction are without recourse for unreasonable water rates. Even where regulation exists, residents may have to bear additional costs if their water is contaminated. Participants noted that many Californians must bear the costs of both regular water service and the purchase of bottled water, which can result in low-income households spending 10-20% of their annual income on water.

Panelists and participants described restrictions on funding and grant criteria as posing barriers to accessing affordable water. Water service providers’ ability to supply water at affordable rates is continuously challenged by increasing costs to finance necessary upgrades to dilapidated infrastructure and to ensure that filtration systems address the contaminants prevalent in a given community. Participants noted that, as a result, state agencies charged with delegating federal funding can have a significant impact on water affordability through their grants programs to local service providers and disadvantaged communities for water quality and infrastructure projects.

Panelists emphasized that disadvantaged communities are less able to access funding streams because of the complex and rigid grant criteria. One program highlighted was the Safe Drinking Water State Revolving Fund (SDWSRF), which distributes federal funding in the form of low-cost loans and other types of assistance for a wide range of drinking water infrastructure projects.<sup>9</sup> Currently there are over 295 projects in disadvantaged communities being funded by the SDWSRF. Participants indicated that funding criteria must be more flexible and accessible, such as loan forgiveness provisions or other modifications, in order to overcome these barriers and allow funding to reach the communities most in need. Another concern raised was the lack of funding sources for smaller water systems serving less than 15 service connections and the private wells that go largely unregulated. Agency representatives expressed an intention to focus efforts to secure funding and promote programs for these communities consistent with the purpose of AB 685.

The barriers facing small communities were an important theme. A current program highlighted was CDPH's Small Water Systems Program Plan (SWSP) which has identified 183 small water systems that fall short of basic health-based standards. The program aims to bring one-third of these systems into sustainable compliance with drinking water standards.<sup>10</sup> The SWSP outlines specific tasks to achieve this goal, including the cooperation and coordination of CDPH staff with county drinking water programs, technical assistance providers, and other stakeholders. Participants pointed out that there are additional small water systems in disadvantaged communities that have yet to be identified by the program, but applauded this comprehensive approach as an important step forward. A participant suggested that creating an outreach team to increase coordination with communities could be useful in further identifying small community water systems with critical compliance issues.

## **2. Quality of Drinking Water**

AB 685 defines the human right to water as ensuring "safe and clean" water<sup>11</sup> and much of the day's conversation emphasized groundwater quality and management issues. Panelists noted that although groundwater is a significant source of drinking water in California, there are no comprehensive statewide assessments of groundwater quality. As a result, groundwater sources remain largely unmonitored and unregulated. The SWRCB's report, *Groundwater Information Accessibility and Identification of Communities Reliant on Contaminated Groundwater*, identifies the extent to which people rely on contaminated groundwater as a primary source of drinking water.<sup>12</sup>

The Groundwater Ambient Monitoring and Assessment (GAMA) Domestic Well Project was described as also contributing to the information available regarding groundwater quality. GAMA provides water quality monitoring of unregulated water sources through the sampling of private domestic wells for common well water chemicals.<sup>13</sup> GAMA incurs the costs of water quality sampling and provides the test results to well owners who volunteer to have their wells sampled. By providing such assistance to private well owners, the program helps to ensure groundwater quality issues can be addressed even where a gap in regulation exists.

Specific programs to address water quality issues more generally were also considered. CDPH's Consolidation Incentive Program provides incentives to larger systems to consolidate with nearby noncompliant systems by moving lower ranked projects in to a category eligible for SDWSRF funding if they agree to consolidate a neighboring noncompliant system.<sup>14</sup> Consolidation was cited as a cost-effective solution for water systems that do not meet safe drinking water standards as it facilitates access to clean water via nearby larger treatment systems and thus circumvents the need to build new systems.

Participants discussed the types of policies and regulations that might fall under the purview of AB 685 and require agencies to consider the human right to water and the potential impact of such interpretations on water quality issues. Some participants proposed that California's Antidegradation policy would fall under the mandate of AB

685 due to the technical definition of policy outlined in the Government Code.<sup>15</sup> The Antidegradation policy aims to protect water quality by prohibiting pollution discharge into high-quality water unless it is in exchange for some greater benefit to the people of the state.<sup>16</sup> The SWRCB has proposed to revise this policy but it was unclear among participants if and how AB 685 should be applied in such circumstances and whether this and similar issues fall within the purview of the legislation. Even when an agency decision touches directly on an aspect of the human right to water, such as quality, it remains unclear how AB 685 applies given the type of policy or regulation at issue. Participants noted that agencies have the authority to give maximum consideration and application to the human right to water policy, even when their legal obligation to do so under AB 685 is not clearly defined.

## **B. IMPLEMENTATION STRATEGIES**

The final session of the Convening focused on the development of a resource tool to guide state agencies in their AB 685 implementation efforts. (See Appendix C) Participants discussed and provided comments on a draft tool developed by the organizers that outlines a framework consisting of six phases for AB 685 implementation:

### **1. Implementation Tool Overview**

- a. *Recognizing Opportunities to Consider the Human Right to Water:* AB 685 specifies that agencies must consider the human right to water in the “revision, adoption, or establishment of policies, regulations, and grant criteria.”<sup>17</sup> Agencies, together with relevant stakeholders, can utilize the principles of AB 685 to identify opportunities for implementation in programs, planning processes, and performance measures.
- b. *Involving Relevant Stakeholders:* Meaningful participation of all relevant stakeholders, including community partners, in the decision-making process is key to ensuring the formulation of effective and responsive policies. Facilitate the exchange of information between the agency and relevant stakeholders to inform agency policies and practices and provide public access to information.
- c. *Exploring Alternatives and Anticipating Impacts:* Agency criteria should reflect the components of the human right to water. Discuss and document the advantages and disadvantages of potential alternative proposals as they relate to the components of the human right to water outlined in AB 685 and with attention to at-risk communities and both short and long-term impacts.
- d. *Determining the Action and Reporting Consideration of AB 685:* Adopt policies and programs that advance AB 685. Transparency involves documenting how the various elements of the human right to water were considered and communicating this decision-making process with stakeholders to ensure accountability in agency actions.

- e. *Evaluating Results and Ensuring Sustainability*: Evaluation criteria should reflect the human right to water in order to maximize the effectiveness of programs and obtain sustainable solutions. Assessment should be done in conjunction with stakeholders, track both positive outcomes and problem areas, and results should be shared with stakeholders.
- f. *Repeating this Process in all Aspects of Agency Work*: This decision-making framework is to be repeatedly utilized in all aspects of agency work and integrated into on-going agency processes and practices in order to advance the goals of AB 685.

While evaluating the draft implementation tool, participants emphasized several key elements of implementation not expressly identified in the six-step framework. The information below details a broader discussion of AB 685 implementation, including responses and suggestions to the draft tool as well as other ideas and strategies related to implementation.

## **2. Incorporation of the Human Right to Water into Agency Decision-Making**

The manner in which the human right to water is to be integrated into agency decision-making was a theme among participants. The various elements of the right outlined in AB 685, such as safety, affordability, and access, provide a point of reference to agencies in determining what is to be considered. While AB 685 calls on agencies to ‘consider’ the human right to water in certain contexts, a more precise implementation process was less apparent to participants. Community participation and engagement was repeatedly raised as an essential component of approach agencies took in implementing the legislation.

One participant pointed to the need for change in how agencies engage in water governance in order to better understand and address the social impact of water policy. A suggested agency approach was to include the incorporation of explicit consideration of the human right to water in strategic plans and progress reports. By extension, agencies may interpret broadly the triggering mechanism of AB 685 and consider the human right to water in all agency decision-making contexts, beyond the prescribed regulation, policy, or grant criteria development.

One speaker emphasized that, from a legal perspective, the terms “regulation” and “policy” used in AB 685 are indicative of minimal instances in which agencies must consider the human right to water in the decision-making process. To ensure broad adherence to the AB 685 mandate, agencies may consider the human right to water in all decision-making processes. One participant raised the examples of agency orders and strategic plans as opportunities for implementation of the human right to water even though it may be unclear whether there is a legal obligation to do so under AB 685.

One agency representative indicated that the agency's legal team could conduct a human right to water analysis of all proposed items that come before it as part of its regular legal analysis process. Recommendations regarding policy and programmatic issues could be made based on the outcome of that analysis. It was suggested this could be incorporated in to current agency practice by utilizing the draft implementation tool or some similar guide to ensure the consistent consideration of the human right to water.

The suggestion was made that state agencies appoint a representative to develop an internal implementation plan and ensure that all staff are aware of AB 685 and the human right to water. While this was highlighted as an effective means to ensure appropriate and consistent consideration within each individual agency, other participants noted that only with support from agency leadership would AB 685's mandate be realized.

Some participants proposed that implementation of AB 685 need not be limited to agencies charged explicitly with the regulation of water. Agencies managing related areas, such as land and community development, may also assess the impact of proposed policies and program activities on the human right to water.

### **3. Stakeholder Involvement**

The involvement of community members in water governance was an overarching theme and several participants expressed concern with the ability of communities to access agencies. Participants addressed the need for meaningful participation of all relevant stakeholders, including community residents, in the decision-making process to ensure formulation of appropriate, responsive policies and community access to information.

Participants recognized that information sharing and collaboration between agencies and communities is essential to maximize the effectiveness of new regulations or projects. Participants applauded the efforts of some agencies to foster community participation in decision-making, such as through the appointment of an environmental justice point person. It was suggested that agencies should utilize community capacity to identify, quantify, and describe water quality issues.

Several participants urged further efforts to facilitate community participation in agency policy development and programs. Suggested strategies included the development of agency best practices, including multilingual meeting notifications, accessible meeting locations, and translation services. An agency representative suggested all agencies could identify a point-person to facilitate information-sharing between agencies and community representatives and thus strengthen communication and relationships.

#### **4. Evaluation and Sustainability**

Participants addressed the need to develop evaluation strategies to ensure that agency activities effectively address priority issues. On-going evaluation was identified as critical to making sure agency activities are responsive to the most urgent needs and that effective programs are sustainable.

Participants urged the creation of community feedback forums or mechanisms. These forums, such as an online comment box or meetings with a stakeholder group, would facilitate consistent feedback to agencies from the communities directly affected by agency activities. Participants noted that this communication loop can inform the development of future agency projects or contribute to the revision of ongoing programs.

Agency representatives commented in detail on the need for inter-agency coordination to ensure efficient water policy development. Ineffective project planning results in part from lack of information regarding water infrastructure or access issues. Such information gaps can be addressed through multi-agency project planning committees.

Participants emphasized the need for increased agency coordination in the documentation of problems to be addressed, information sharing, coordinated enforcement, and joint progress evaluations. Several participants also expressed the need for increased inter-agency communication to ensure that agency activities complement, rather than overlap with or inhibit, the projects of other agencies.

Finally, some participants commented that litigation and further legislative initiatives may become necessary to ensure the realization of the human right to water. However, it was believed that increased information exchanges between community groups and agencies would prevent the need for litigation.

## **IV. CONCLUSION**

AB 685 statutorily declares the right of all Californians to access safe and affordable water. While the law identifies state agencies as key actors to realizing this right, it provides minimal guidance regarding how agencies should approach implementation. The Convening afforded agencies and other stakeholders the opportunity to engage in a conversation about a comprehensive and integrated approach to implementation. However, more thought, coordination, and planning is required to ensure full and effective implementation by individual agencies and across state government. The discussions and insights contained in this report can serve the objectives of AB 685 by generating a conversation within agencies about their decision-making process and implementation efforts as well as a dialogue between agencies about how best to coordinate and maximize those implementation efforts. The human right to water law offers California an important tool in developing sustainable solutions to the state's most critical water challenges.

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<sup>1</sup> This report was prepared by Palmer Buchholz '15 and Sheena Stoecker '15, law student interns, under the supervision of Allison Davenport, Clinical Instructor, with the International Human Rights Law Clinic at University of California, Berkeley School of Law.

<sup>2</sup> AB 685: Human Right to Water, CAL. WATER CODE § 106.3 (2012) (West 2013).

<sup>3</sup> See generally, *Communities that Rely on Contaminated Groundwater (Draft)*, STATE WATER RESOURCES CONTROL BOARD (Feb. 2012), available at

[http://www.swrcd.ca.gov/gama/ab2222/docs/cmntes\\_rely\\_gw.pdf](http://www.swrcd.ca.gov/gama/ab2222/docs/cmntes_rely_gw.pdf) [hereinafter COMMUNITIES THAT RELY ON CONTAMINATED GROUNDWATER]. See also U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Mission to the United States of America*, at 37, U.N. Doc.

A/HRC/18/33/Add.4 (Aug. 2, 2011) (by Catarina de Albuquerque) [hereinafter UN Report].

<sup>4</sup> CAL. WATER CODE § 106.3, *supra* note 1.

<sup>5</sup> State Water Res. Control Bds., *Recommendations Addressing Nitrate in Groundwater* (2013), available at [http://www.waterboards.ca.gov/water\\_issues/programs/nitrate\\_project/docs/nitrate\\_rpt.pdf](http://www.waterboards.ca.gov/water_issues/programs/nitrate_project/docs/nitrate_rpt.pdf).

<sup>6</sup> Letter from Central Coast Reg'l Water Quality Control Bd. to Claire Wineman, President, Grower-Shipper Ass'n of Santa Barbara and San Luis Obispo Counties (Apr. 17, 2013); Letter from Central Coast Reg'l Water Quality Control Bd. to Abby Taylor-Silvia, Vice President, Grower-Shipper Ass'n (Apr. 17, 2013).

<sup>7</sup> Dept. of Water Res., *California Water Plan Update*, at \*4-8 (2013).

<sup>8</sup> Cal. Pub. Util. Commission, Notices Mandated by Assembly Bill 1830 for Mobile Home Park Tenants (last updated Jan. 24, 2013), <http://www.cpuc.ca.gov/PUC/aboutus/Divisions/CSID/Public%20Advisor/MHPWaterNotice.htm> (The complaint must also be signed by tenants representing 10% or more of the Mobile Home Park's water service connections during any 12-month period).

<sup>9</sup> U.S. Env'tl. Prot. Agency, Drinking Water State Revolving Fund (DWSRF) (last updated Sep. 12, 2013), [http://water.epa.gov/grants\\_funding/dwsrf/index.cfm](http://water.epa.gov/grants_funding/dwsrf/index.cfm).

<sup>10</sup> Cal. Dept. of Pub. Health, Small Water Systems Program Plan (last updated Nov. 12, 2013), <http://www.cdph.ca.gov/certlic/drinkingwater/Pages/Smallwatersystems.aspx>.

<sup>11</sup> Cal. Water Code § 106.3(a) (West 2012).

<sup>12</sup> Cal. State Water Res. Control Bd., Groundwater Information Accessibility and Identification of Communities Reliant on Contaminated Groundwater—AB 2222 (last updated Feb. 11, 2013), [http://www.waterboards.ca.gov/water\\_issues/programs/gama/ab2222/index.shtml](http://www.waterboards.ca.gov/water_issues/programs/gama/ab2222/index.shtml) (The report also identifies potential solutions and funding sources to clean up or treat groundwater or to provide alternative water supplies to ensure the provision of safe drinking water to communities.).

<sup>13</sup> Cal. State Water Res. Control Bd., GAMA – Groundwater Ambient Monitoring & Assessment Program (last updated Oct. 30, 2013), <http://www.waterboards.ca.gov/gama> (The DPH does not regulate the quality of private domestic wells or the quality of water from sources serving anything less than 25 people at least 60 days of the year, with more than 15 service connections.).

<sup>14</sup> Cal. Dept. of Pub. Health, Consolidation Incentive Program (last updated Nov. 22, 2013), <http://www.cdph.ca.gov/services/funding/Pages/ConsolidationIncentive.aspx>.

<sup>15</sup> Govt. Code § 11342.600 defines regulation as follows: "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>16</sup> Cal. State Water Res. Control Bd., Resolution No. 68-16 (Oct. 28, 1968), [http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/1968/rs68\\_016.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf).

<sup>17</sup> Cal. Water Code § 106.3(a).



# APPENDIX A

## Implementation of the Human Right to Water in California

### Agenda

Tuesday, November 12, 2013

Sacramento, California

- 11:45 – 12:00 PM                      REGISTRATION
- 12:00 – 12:45 PM                      OPENING REMARKS & LUNCH  
*Welcome:*                      *Allison Davenport, U.C. Berkeley School of Law*  
*Keynote:*                      *Nancy McFadden, Executive Secretary, Office of the Governor*  
*Film Excerpt:*                *'Thirsty for Justice'*  
*Remarks:*                    *Maria Herrera, Community Advocacy Director, Community Water Center*
- 12:45 – 2:15 PM                      CRITICAL JUNCTURES IN AB 685 IMPLEMENTATION  
*AB 685 created an ongoing obligation for relevant state agencies to consider the human right to water when revising, adopting, or establishing policies, regulations and grant criteria. This session will explore the range of agencies that fall within AB 685's purview, how and when their duty to consider the human right to water is triggered, and seek to clarify the scope and exceptions to this obligation through a discussion of recent policy initiatives.*
- Panelists:*                      *Catherine J.K. Sandoval, Commissioner, CPUC*  
   *Felicia Marcus, Chair, State Water Resources Control Board*  
   *Colin Bailey, Executive Director, Environmental Justice Coalition for Water*  
*Moderator:*                    *Debbie Davis, Governor's Office of Planning and Research*
- 2:15 – 2:30 PM                      BREAK
- 2:30 – 3:15 PM                      SHAPING WATER POLICY THROUGH AB 685  
*California is the first state in the nation to legislatively recognize that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption." This session will explore the various aspects of the human right to water - quality, affordability, and accessibility - and how state agencies can integrate these principles into their respective policies, guidelines, and practices.*
- Panelists:*                      *Gary Bardini, Deputy Director, Department of Water Resources*  
   *Mark Starr, Deputy Director, California Department of Public Health*  
*Moderator:*                    *Lisa Beutler, Executive Facilitator, California Water Plan Update 2013 and Water Resources Group MWH Americas*
- 3:15 – 4:15 PM                      DEVELOPING AN IMPLEMENTATION TOOL FOR STATE AGENCIES  
*The goal of this session is the development of a resource tool for state agencies that can guide AB 685 implementation efforts. Commentators and participants will discuss and provide input into a draft implementation tool developed by conference organizers.*
- Commentator:*                *Vern Goehring, Policy Consultant, Food & Water Watch*  
*Moderator:*                    *Lisa Beutler, Executive Facilitator, California Water Plan Update 2013 and Water Resources Group MWH Americas*
- 4:15 – 4:30 PM                      CLOSING REMARKS

## ***APPENDIX B***

### ***Concept Paper***

## **Convening on the Implementation of the Human Right to Water (AB 685)**

**November 12, 2013  
Sacramento, California**

### **Context**

In 2012, California became the first state in the nation to legislatively recognize the human right to water. While California has a history of enacting water protections, AB 685 is the strongest articulation of the state's commitment to safe and affordable drinking water.

AB 685 places the right of all Californians to clean, affordable, and accessible water at the center of state policy and focuses the institutions of a diffuse water regime on this central goal.<sup>1</sup> AB 685 requires all relevant state agencies to consider the human right to water "when revising, adopting, or establishing policies, regulations, and grant criteria" relevant to domestic water uses.<sup>2</sup> However, AB 685 is limited in its application. It directly applies to state agencies, exempts public water systems and local governments from its purview, and does not create an individual cause of action or require additional expenditures. Additionally, AB 685 provides little regulatory guidance for implementation.

In its first year since enactment, state agencies have taken significant steps to implement AB 685. The State Water Resources Control Board, for example, has recommended tightening controls on the discharge of groundwater contaminants in consideration of the health impact of unsafe water,<sup>3</sup> CAL/EPA has considered AB 685 in discussing the disclosure of private wells locations,<sup>4</sup> and the multi-agency taskforce drafting the 2013 State Water Plan has referred to AB 685 in identifying policy objectives.<sup>5</sup>

While individual agencies have considered AB 685 in the development of policies and programs, a coordinated and consistent approach to implementation has yet to develop. This Convening will provide a first opportunity for agency and community representatives to explore how California's most pressing water issues can be addressed through a comprehensive and integrated approach to AB 685 implementation.

### **Objectives**

The Convening aims to:

- Foster a discussion among key stakeholders from across state agencies about implementation of the human right to water;
- Examine the scope and meaning of the legislation;
- Address common challenges in fulfilling the duties and obligations established by AB685;
- Identify strategies for effective implementation of AB 685; and
- Further the development of a proactive, comprehensive and integrated approach to AB 685 implementation.

## Format

The Convening is an **invitation-only** event. It will begin at 11:45 a.m. and conclude at 4:30 p.m. on Tuesday, November 12, 2013 in Sacramento, California. Through a combination of presentations and discussions, the Convening aims to facilitate a grounded and open discussion that results in tangible guidance for implementation.

The convening will begin with a lunch-time keynote address by Nancy McFadden, Executive Secretary, Office of the Governor, followed by a screening of a short excerpt from a forthcoming documentary film on the human right to water in California.

Relevant experts from a variety of agencies will participate in panels followed by moderated discussions. The panels include:

1. *AB 685 Implementing Agencies*: This session will explore the range of state agencies within AB 685's purview either due to an explicit reference in the statute or their oversight role in programs and activities that relate to access to clean water. Agency officials will describe activities and programs that fall within AB 685's mandate to ensure universal access to safe and affordable water.
2. *Critical Junctures in AB 685 Implementation*: AB 685 requires states agencies to consider the human right to water when revising, adopting, or establishing policies, regulations and grant criteria. This session will describe how and when consideration of the human right to water is triggered and seek to clarify the scope and exceptions to this obligation through a discussion of recent policy initiatives.
3. *Shaping Water Policy Through AB 685*: AB 685 codifies that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption."<sup>6</sup> This session will explore the various aspects of the human right to water- quality, affordability, and accessibility—and how state agencies can integrate these principles in to their respective policies, guidelines, and practices.

The Convening will conclude with a working session during which participants will discuss strategies to advance implementation and provide feedback on a draft implementation tool designed to guide AB 685 implementation efforts by state agencies. The draft tool will be circulated in advance by convening organizers and later refined to incorporate suggestions from participants.

Organizers will draft a report summarizing the day's presentations, discussions, and recommendations. *This report will not attribute comments made during discussions to individual participants or the agencies they represent.* The report and revised implementation tool will be published and distributed to participants in December 2013.

## Participants

Representatives from multiple agencies have been invited, including: the California Environmental Protection Agency, Department of Water Resources, State Water Resources Control Board, the Health and Human Services Agency, the California Department of Public Health, among others. Representatives from the Governor's Office, legislative offices, and local water boards will also be in attendance. Finally, leading community experts and community residents will participate as speakers and panelists.

Speakers, panelists, commentators and moderators include:

- Colin Bailey, Environmental Justice Coalition for Water
- Gary Bardini, Deputy Director, Department of Water Resources
- Lisa Beutler, Executive Facilitator, California Water Plan Update 2013
- Erika Contreras, Chief of Staff, Senator Ricardo Lara
- Nancy McFadden, Executive Secretary to the Governor
- Felicia Marcus, Chair, State Water Resources Control Board
- Catherine Sandoval, Commissioner, California Public Utilities Commission
- Mark Starr, Deputy Director, California Department of Public Health
- Vern Goehring, Policy Consultant, Food & Water Watch

### **Organizers' Contact Information**

The Convening is organized by the International Human Rights Law Clinic (IHRLC) at the University of California, Berkeley School of Law. In May 2012, the IHRLC published the report, "The Human Right to Water Bill in California: An Implementation Framework for State Agencies." The goal of the report was to place AB 685 in the context of water policy in California, explore its scope and meaning, and identify guiding principles for implementation efforts. The IHRLC has worked with the Safe Water Alliance and the United Nations' Special Rapporteur on the human right to safe drinking water and sanitation in researching the implications of AB 685. The IHRLC has also briefed legislative staff and representatives from state agencies on this issue.

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<sup>1</sup> AB 685: Human Right to Water, CAL. WATER CODE § 106.3 (2012) (West 2013).

<sup>2</sup> *Id.*

<sup>3</sup> State Water Res. Control Bds., *Recommendations Addressing Nitrate in Groundwater* (2013), available at [http://www.waterboards.ca.gov/water\\_issues/programs/nitrate\\_project/docs/nitrate\\_rpt.pdf](http://www.waterboards.ca.gov/water_issues/programs/nitrate_project/docs/nitrate_rpt.pdf).

<sup>4</sup> Letter from Central Coast Reg'l Water Quality Control Bd. to Claire Wineman, President, Grower-Shipper Ass'n of Santa Barbara and San Luis Obispo Counties (Apr. 17, 2013); Letter from Central Coast Reg'l Water Quality Control Bd. to Abby Taylor-Silvia, Vice President, Grower-Shipper Ass'n (Apr. 17, 2013).

<sup>5</sup> Dept. of Water Res., *California Water Plan Update*, at \*4-8 (2013).

<sup>6</sup> *Id.* § 106.3.

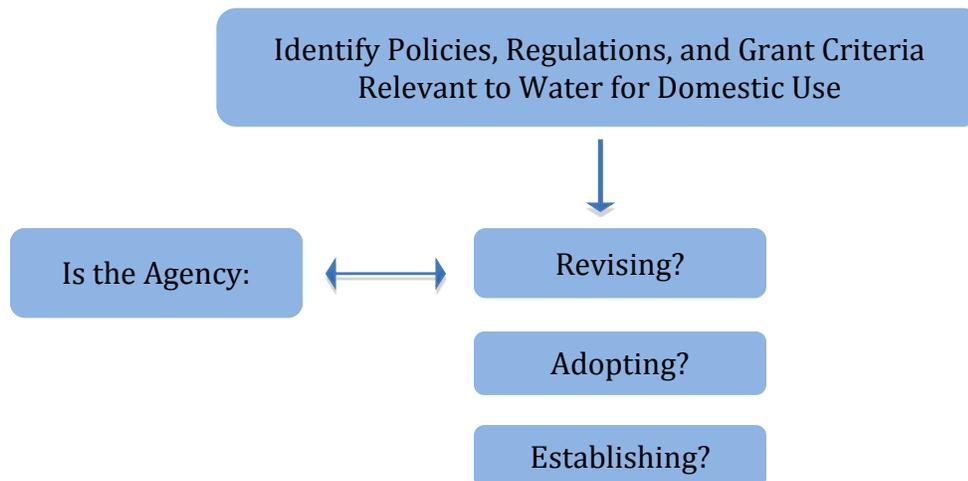
## APPENDIX C

### The Human Right to Water in California: An Implementation Tool for State Agencies

**GOAL:** To advance the human right to water and improve access to safe, affordable water for all California residents through an on-going and dynamic process in which state agencies consider the objectives of AB 685 in decision-making, meaningfully engage with relevant stakeholders, and share information in an accessible manner.

#### **PHASE I: Recognizing Opportunities to Consider the Human Right to Water**

*Objective: Identify relevant policies, regulations, and grant criteria that impact the human right to water as outlined in AB 685.*

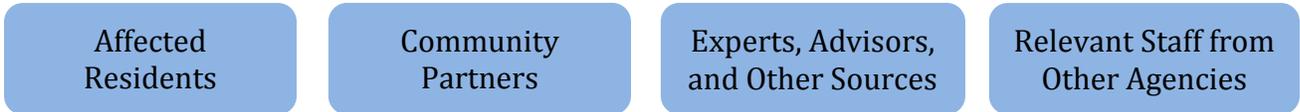


#### ***Suggested Strategies:***

- Integrate the human right to water into existing agency criteria, performance measures, and principles.
- Incorporate opportunities for implementation of AB 685 into regular agency planning processes.
- Improve community partnerships, particularly with disadvantaged communities, through the recognition of the human right to water as a common principle to identify policies, regulations, and grant criteria that impact the human right to water.
- Share information about AB 685 implementation efforts with relevant staff in all programmatic areas and at all levels of the agency to promote systemic implementation.

## **PHASE II: Involving Relevant Stakeholders**

*Objective: Facilitate the meaningful participation of affected communities and other stakeholders to inform responsive policies and ensure access to information.*

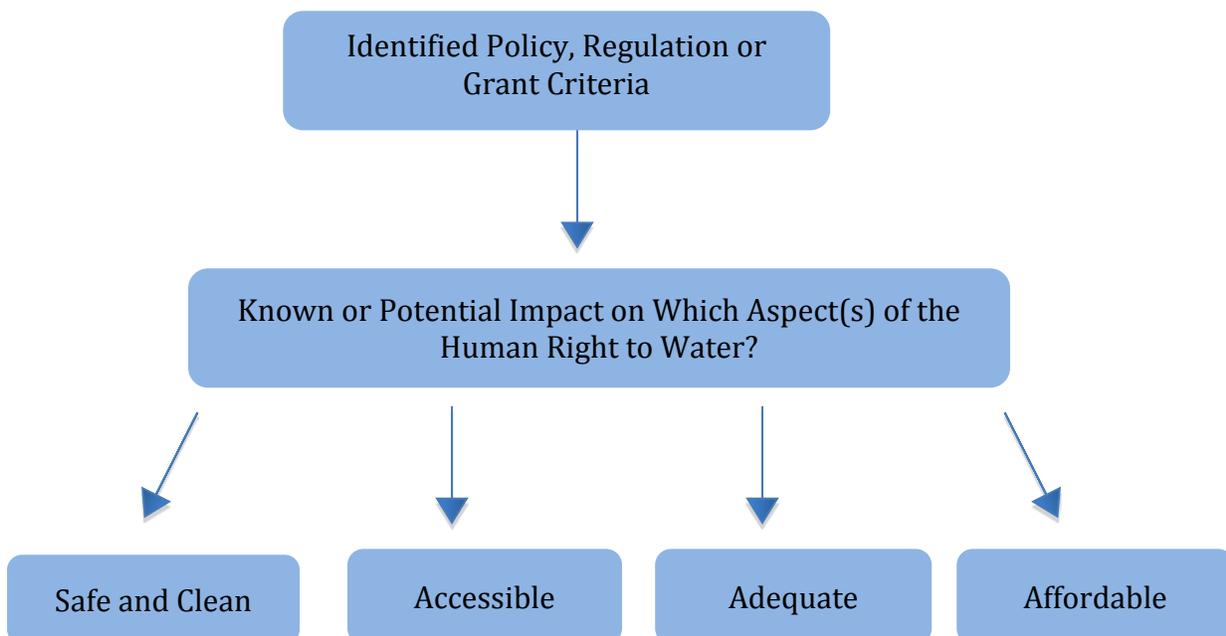


### ***Suggested Strategies:***

- Maintain a database of relevant stakeholders, including members affected communities, in order to facilitate engagement with interested parties.
- Strengthen relationships with relevant stakeholders through existing systems as well as the development of new mechanisms, and identify where such relationships need to be established.
- Identify an agency point person on the human right to water to allow for increased contact with affected community members and the effective exchange of information.
- Deepen opportunities for meaningful participation by affected communities through a set of agency best practices (such as multilingual meeting notifications, accessible meeting locations, translation services at meetings, etc.).
- Increase access by the public to current, audience-appropriate information about agency activities and decisions, accounting for language diversity and barriers in access to technology.

## **PHASE III: Exploring Alternatives and Anticipating Impacts**

*Objective: The policy objectives outlined in AB 685 guide agency decision-making.*

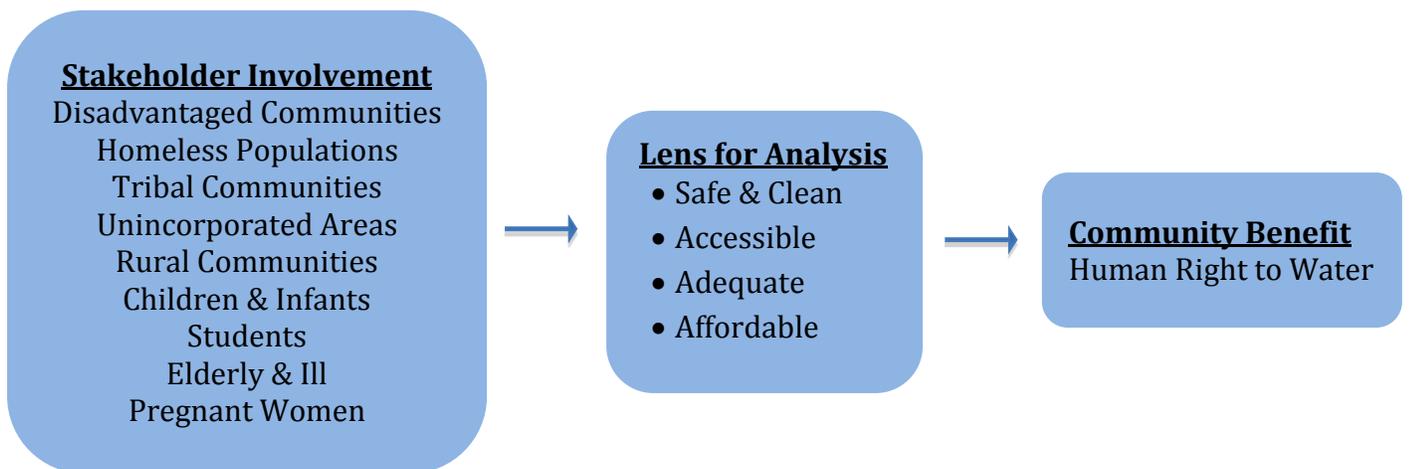


***Suggested Strategies:***

- Ensure agency decision-making criteria reflect the components of the human right to water outlined in AB 685.
- Discuss and document how each potential alternative advances, hinders or otherwise impacts the components of the human right to water in both the short and long term.
- Engage with relevant stakeholders when assessing potential impacts and considering alternatives.
- Consider the scale and severity of potentially adverse consequences, including unintended repercussions, particularly on at-risk and disadvantaged communities.
- Identify gaps in data needed to accurately assess potential impacts.

**PHASE IV: Determining the Action and Reporting on Consideration of AB 685**

*Objective: The human right to water informs transparent decision-making processes.*



***Suggested Strategies:***

- Adopt policies, regulations and grant criteria that advance the human right to water, especially for disadvantaged communities, and refrain from those that run contrary to the stated goals of AB 685.
- Document the anticipated impact of the agency’s decision on access to safe, affordable water in both the short and long term and for specific populations.
- Explain the reasoning that informed the final agency decision, acknowledging how competing interests were weighed and what aspects of the decision will need to be carefully monitored and evaluated.
- Document how the human right to water was integrated into the agency’s decision-making process.

## **Phase V: Evaluating Results and Ensuring Sustainability**

*Objective: Evaluate outcomes of decisions and share findings to ensure AB 685 implementation efforts are effective and sustainable.*

Safe & Clean?       Adequate?   
Accessible?       Affordable?

### ***Suggested Strategies:***

- Incorporate the human right to water into existing monitoring metrics or adopt such measures.
- Maintain stakeholder participation by including them in assessment process, facilitating feedback, and keeping them informed of results.
- Identify and document positive outcomes to generate best practices and replicable models.
- Identify and document problem areas, unresolved issues, and unintended consequences that require additional attention or a modified response.
- Share findings with relevant agency staff to foster institutional awareness and knowledge.
- Share outcomes with the public, and in particular with affected communities, to ensure a transparent process and accountability.
- Where barriers to the objectives of AB 685 persist, consider what options- such as enforcement mechanisms, litigation, additional funding, and legislative reform- might be used to address remaining obstacles.

## **Phase VI: Repeat: Continue this process in all aspects of agency work...**

