



**TALKING POINTS**  
**AB 685 (Eng) – *The Human Right to Water***  
Revised: August 5, 2013

**Overview**

- Access to safe, clean, affordable, and accessible water is a fundamental human right; essential for a healthy population, environment, and economy.
- California is a wealthy state – ahead of 12 countries in GDP – and yet, millions of California residents lack basic access to safe, clean, affordable, and accessible water.
- This lack of access disproportionately affects low-income communities and communities of color in rural, tribal, and urban areas. Communities in the Central Valley and Central Coast regions who rely solely on groundwater are particularly at risk.
- This disparity is the direct result of State and federal water policies that have benefitted wealthy and powerful interests while neglecting the basic needs of more than 11.5 million Californians who rely on water suppliers that face at least one violation of State Drinking Water Standards.
- Impacted communities face multiple barriers to accessing safe water in a variety of contexts and are likely exposed to contaminated drinking water in their homes, public institutions, schools, and workplaces, resulting in significant health and economic impacts.
- AB 685 (Eng) – The Human Right to Water, was signed into law on September 25, 2012, making California the first state in the nation to legally recognize the human right to water (HRTW). This legislation is now integrated into a framework for decision-making by State agencies.
- AB 685 affirms the State’s commitment to guaranteeing *affordable, accessible, acceptable, and safe water sufficient to protect the health and dignity of all residents*, prioritizes water for personal and domestic use, and delineates the responsibilities of public officials at the state level.
- The HRTW extends to *all* Californians – including vulnerable and marginalized individuals, groups, and communities in rural, tribal, and urban areas.
- As sponsors of AB 685, the SWA continues to work towards the full realization of the HRTW by educating policy makers, working with state agencies to ensure that this right is fully considered at every relevant juncture, and empowering residents to achieve the HRTW for their own communities.

**Defining the Human Right to Water**

- AB 685, now Water Code Section 106.3, statutorily recognizes that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”
- AB 685 is a floor, not a ceiling. It cannot be fulfilled by one single action; rather, its principles must be integrated by agencies in a continuous way at every relevant juncture.
- “Relevant agencies” specifically include the DWR, SWRCB, and CDPH, however this list is non-exhaustive.

**Agencies Have a Duty to Consider the Human Right to Water**

- AB 685 creates an ongoing obligation for State agencies *to consider* the HRTW – specifically the factors of safety, affordability, and accessibility – in all relevant policy, programming, and budgetary activities.
- According to relevant case law and international standards, in order to fulfill the directive “to consider,” agencies must:
  - Give preference to and adopt policies that advance the HRTW;
  - Refrain from adopting policies or regulations that run contrary to the HRTW; and
  - Note in the record of decisions the possible impact that actions will have on the HRTW.

- Agencies should consider the HRTW when:
  - Planning priorities and initiatives;
  - Developing an approach for public participation;
  - Providing public access to information about water quality, accessibility, and affordability;
  - Reporting on agency actions that impact domestic water use; and,
  - Determining loans and grant criteria for water infrastructure improvement.

### **The HRTW Protects Against Discrimination**

- Discrimination can exist in multiple forms and can be direct or indirect in nature, involving policies or practices that are facially neutral but have a disproportionate impact on a particular group or unfairly pit disadvantaged communities against each other.
- Policies, procedures, and practices should address historic marginalization of certain communities and must not exacerbate the conditions under which affected residents lack equal access to safe drinking water.
- Actions taken by State agencies must be fair, inclusive, guard against discrimination and neglect, and equally weigh the needs and considerations of all communities.
- In applying this principle, agencies should:
  - Review policies and practices with an eye to identifying potential grounds for discrimination; and
  - Facilitate access to clean water by disadvantaged communities through budgetary allocations and increased access to funding for infrastructure improvements.

### **Agencies Should Encourage and Not Discourage Public Participation**

- Meaningful public participation calls for full and equal access to information, as well as opportunities for community members to actively participate and engage at all levels of decision-making with their water governance.
- Examples of meaningful public participation practices include: notifying residents of hearings in a timely manner, holding meetings in locations accessible to affected communities, and making information on water quality and safety both physically and electronically accessible in relevant languages.
- A more deliberate example of public participation would be the creation of an environmental justice program or department within a State agency, such as in the case of the Cal EPA Environmental Justice Program.

### **Interconnectedness of Fish, Water Quality, Supply, and People**

- The HRTW is a counterbalance to a purely environmental approach for dealing with the State’s water resources. It is not a trade-off – they are complementary.
- The “fish vs. people” problem is a false dichotomy.
- Healthy fish contribute to a healthy ecosystem, which is essential for good water quality and supply as well as prosperous communities and local economies.
- The HRTW moves us towards a more sustainable future based on the mutually-reinforcing benefits of healthy ecosystems, communities, and economies, and is thus positive for fish, residents, and workers.

### **Litigation**

- Ultimately, the courts have the authority to determine whether an agency has adequately considered the HRTW in accordance with AB 685.

### **Implementation**

- In order for AB 685 to operate at its full potential, legislators must adopt a proactive approach to oversight and accountability that establish clear points of entry for the HRTW into the regulatory system.
- State agencies need to be proactive regarding implementation by establishing benchmarks and conducting assessments of progress; and instituting enforcement, remediation, and forward-looking policies to prevent future discrimination and neglect.
- Implementing AB 685 requires coordinated efforts between legislators, State agencies, advocates, and community members. These efforts consist of education, policy development, and collaborating on future initiatives.

- Current and past implementation efforts undertaken by the SWA include:
  - Briefing Legislative and Agency Staff
    - On June 6, 2013, the SWA and UC Berkeley International Human Rights Law Clinic conducted a briefing on the HRTW for legislative staff, stakeholder groups, and representatives of relevant State agencies at the State Capitol.
    - The SWA will conduct future briefings in the Central Valley and Salinas Valley and at policy, environmental justice, and water conferences.
    - The SWA will present to other environmental justice, human rights and civil rights advocacy groups.
  - Developing Policy
    - SWA, in partnership with the UC Berkeley International Human Rights Law Clinic, has developed a framework/guidance document for State agencies that outlines their responsibilities in upholding the HRTW. This document was finalized in June 2013.
    - Sponsoring and advocating for legislation that furthers the HRTW.
  - Working Collaboratively with State Agency Leadership on the HRTW
    - SWA members have met with Secretary Rodriguez of the Cal EPA and Executive Staff at the Department of Water Resources. SWA members have also met with State Water Board Member Felicia Marcus.
    - SWA members are working on meeting with the following Departments:
      - Department of Pesticide Regulation (DPR): Meeting with Director Brian Leahy to review impacts of pesticides on drinking water;
      - Department of Water Resources (DWR): Meeting with Director Mark Cowin;
      - Health and Human Services Agency (HHS): Meeting with Secretary Diane Dooley; and
      - State Water Board (SWB): Meeting with Board Members regarding the development of HRTW procedures and protocol.
    - In collaboration with impacted communities and other water advocates, SWA is organizing at least two EJ tours with Agency Directors and Water Board Members. These EJ tours will provide decision-makers with first-hand experience of the water issues faced by Central Valley communities.

### **Getting Involved in the Human Right to Water**

- Read the AB 685 Framework – listed below.
- Contact legislators and reach out to State agencies to educate them on the HRTW and their responsibility to ensuring proper implementation.
- Support SWA advocacy efforts at the state-level and regionally.
- Join or become an affiliate of the SWA. Alliance general membership meets monthly or bi-monthly.
- Participate in the decision-making processes of your own local water governance and educate your community on the HRTW.

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### **AB 685 Framework Can Be Found at:**

[http://www.law.berkeley.edu/files/Water\\_Report\\_2013\\_Interactive\\_FINAL.pdf](http://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf)