Addressing Environmental Justice in California
By Gregory King

Lyrics from Bruce Hornsby and the Range's popular ballad of a few years back, "The Way It Is" is as good a place as any to begin to understand environmental justice:

Well, they passed a law in '64
To give those who ain't a little more
But it only goes so far
Cause the law don't change another's mind.

Had the Civil Rights Act of 1964, signed by President Lyndon B. Johnson, fully eliminated racial discrimination in America, it is very unlikely environmental justice would have ever emerged as the issue it is today. Instead, with its roots in the civil rights movement of the 1960s, environmental justice gained momentum in the 1980s and became a full-fledged movement in itself within the past few years. To type the words "environmental justice" into a web-based search engine like Google.com is to invite an avalanche of potential information. A recent attempt brought "about 771,000 results."

This article explores the origins and brief historical development of environmental justice, delineates its broad policy outlines, and provides a conceptual framework for understanding environmental justice within the context of state and federal environmental regulatory compliance. The article summarizes recent legislative initiatives and legal decisions that will further shape how environmental justice is carried out in the Golden State. This article also provides practical suggestions for addressing environmental justice.

Why is Environmental Justice Important?

Why does environmental justice matter? For those of us working in an affiliated environmental field, the failure to address environmental justice concerns might cause the delay or even failure of a proposed project or provoke legal action. More importantly, environmental justice embraces the precept that all people and communities are entitled to equal protection under our environmental, health, employment, housing, transportation, and civil rights laws: achieving environmental equity is the right thing to do in a society which espouses democratic principles. To ensure fairness, the analysis of potential impacts must be considered for their social implications.

Perhaps this is no where more important than in California where more than 17 million of its some 34 million residents are considered members of minority groups. The demographic characteristics of the State will continue to become more racially and ethnically diverse. And, to respond to a common question, environmental justice does indeed apply even when minorities account for a majority of the total population. The term "minority" is not a numerical reference. Indeed, according to the California Department of Finance, beginning in 1999, no racial or ethnic group constituted a majority in the State. Clearly, a sociological minority group could be a numerical majority (e.g., Blacks living in South Africa, to use an extreme example) but still be systematically excluded from certain societal privileges. But this discussion to defend or challenge the concept of environmental equity is beyond the scope of this article.

There are some who falsely believe that the advent of environmental justice began with President Bill Clinton's issuance of Executive Order 12898 in 1994 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") which required that each federal agency "shall

make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." While the spotlight from the former Administration certainly focused attention on environmental justice, its beginnings were presaged many years earlier among community advocacy groups.

Environmental Justice Defined

The United States Environmental Protection Agency (EPA) has defined environmental justice as, "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." Note the similarities in the description of environmental justice in state legislation (Government Code Section 65040.12) as, "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

Dr. Robert Bullard, former professor of sociology at UC-Riverside, and now with the Environmental Justice Research Center at Clark Atlanta University, has written two influential books, *Dumping In Dixie: Race, Class and Environmental Quality* (1990) and *Unequal Protection: Environmental Justice and Communities of Color* (1994). In the latter book, Bullard writes, "The goal of an environmental justice framework is to make environmental protection more democratic. It brings to the surface the ethical and political questions of `who gets what, why, and in what amount." He adds, "The environmental justice movement attempts to address environmental enforcement, compliance, policy formation, and decisionmaking. It defines environment in very broad terms, as the places where people work, live and play."

Some have boiled down environmental justice to these words: "Who Wins and Who Loses?" In practical terms, environmental justice concerns have been raised in association with a myriad of projects in communities of color in California: they include the proposed construction of a new freeway, the siting of new or re-licensing and expansion of energy facilities, the shift of aircraft flight patterns over neighborhoods, the placement of schools or parks on sites without adequate clean-up of toxic materials, the lack of equitable employment opportunities and job training in connection with the approval of a large infrastructure projects, lack of equitable and adequate mitigation for cumulative noise, or air pollution, the unequal disbursement of transportation dollars, the uneven accessibility of recreational facilities to different segments of society, housing issues, and local zoning enforcement, to name but a few.

History

Many trace the recent origins of environmental justice to an event nearly twenty years ago when hundreds of residents of a predominately African-American and low-income community in Warren County, North Carolina, demonstrated against the siting of a polychlorinated-biphenyl (PCB) landfill near their homes arguing it violated both environmental and civil rights laws. This act of civil disobedience in 1982 in Warren County resulted in approximately 500 arrests. Though the landfill was sited anyway, the nonviolent demonstrations and a congressional request induced the General Accounting Office to launch a study of EPA's Southern Region (Region IV), "Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities," in 1983. This, and later studies, revealed that a predominance of hazardous waste sites were located in, and adjacent to lowerincome and minority communities – and, surprising to many, this was discovered to be not exclusively a Southern phenomenon.

Actually, as early as the 1970s the President's Council on Environmental Quality (CEQ) reported the correlation among environmental risk, race and income, and a study by sociologist Robert Bullard in 1983 concluded that race was a factor in the siting of a landfill in Houston. But for the most part the issue emerged slowly across America as grassroots groups formed in minority and low-income communities in response to specific environmental problems.

The term "environmental justice" was coined in response to the term "environmental racism," used for the first time in 1987 by Dr. Benjamin Chavis while Executive Director of the United Church of Christ's Commission for Racial Justice. An influential and controversial report, "Toxic Wastes and Race in the United States," by that organization found a correlation between race and the incidence of living near commercial hazardous waste facilities and abandoned toxic sites. When other variables were held constant, including income levels, race was most often the predominant statistically significantly variable for the placement or expansion of industrial and hazardous land uses, whether intentional or not. Other studies also highlighted patterns reflecting disparate enforcement of existing environmental laws by state and federal agencies; monetary fines and penalties against corporate polluters for leaks and spills was generally greater, and clean-up of contaminated sites more likely to be enforced, if these were located near predominately white, more-affluent communities.

In 1990, EPA established an Environmental Equity Work Group to study evidence that minority and lowincome communities shoulder a disproportionate share of environmental risks, issuing a report, *Environmental Equity: Reducing Risk in All Communities*. And, in 1991, environmental justice activists met in the nation's capitol to hold the first National People of Color Environmental Leadership Summit. From that summit came *Principles of Environmental Justice*, one of which states that "environmental justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning implementation, enforcement and evaluation.

In 1993, the American Bar Association became the first mainstream organization to recognize environmental justice when it approved a resolution urging federal and state legislatures to enact legislation "to redress and eliminate situations in which minority and/or low-income people have borne a disproportionate share of harm to the environment." And, in 1994, the Center for Policy Alternatives released *Toxic Wastes and Race Revisited*, an update to the 1987 United Church of Christ Commission for Racial Justice Report, which, in analyzing population data and EPA figures, concluded that problems of environmental injustice had actually worsened significantly over the previous decade, despite increased focus on the problem.

Therefore, by the early 1990s, and to some extent continuing even today, one needs to understand that in the mind of many activists, in seeming to ignore certain segments of its populace, or through its various permitting processes, government (at any level) was just as guilty as the corporate polluters who damaged their community and disproportionately exposed them to environmental hazards.

Some have argued that the primary cause for the disparate distributions of incinerators, landfills, chemical processing plants, waste-generating facilities, noise sources, transportation infrastructure, and the like – locally undesirable land uses (or LULUs) -- is simply a case of market dynamics and not targeted racism; that at the time of the siting of a noxious facility there was no discrimination but eventually over time those nearby residents who could climb the ladder of success would move on to a more desirable neighborhood. Other residents, often non-white and on the lower end of the economic scale, either stayed and others came to reside in the older housing stock (with its concomitant lower property values)

generally near these LULUs. This "white flight" debate has been likened to the "chicken and egg" analogy because it is a circular argument with no ability to determine cause and effect.

Regardless of the origins for the inequitable distribution of unfavorable land uses (at least from a health and environmental perspective), studies have consistently demonstrated that exposure to hazardous materials may cause a myriad of health problems, including increased incidences of cancer, lead poisoning, kidney disorders, birth defects, lung disease, immune and nervous system disorders, asthma, and others. Therefore, it is understandable that grassroots organizations and community advocates desire that a full disclosure of possible exposures from the nearby or proposed noxious facilities be presented during the planning and environmental decision-making process.

Title VI of the Civil Rights Act of 1964

In order to understand environmental justice, one must start with Title VI of the Civil Rights Act of 1964. It provides that no person shall on the ground of "race, color, or national origin" be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Title VI prohibits intentional discrimination. Later amendments to the Civil Rights Act extended non-discrimination to people based on religion, gender, age and disability. Note that low income populations, though identified in Executive Order 12898, are not a protected population group for discrimination purposes, per se.

In the Civil Rights Restoration Act of 1987 Congress amended Title VI to specify that *entire* institutions receiving federal funds – whether they be schools and colleges, local or state government entities, or private corporations – must comply fully with Federal civil rights laws, rather than just the specific programs or activities that receive the funds.

In a far-reaching decision that served to later propel the environmental justice movement, the U.S. Supreme Court in *Guardians Association v. Civil Service Commission of New York* (1983) stated that Title VI permits Federal agencies to promulgate implementing regulations that also prohibit discriminatory "effects" which are unintentional (disparate impact) in addition to intentional discrimination. The Supreme Court upheld the "effects" based regulations in *Alexander v. Choate* (1985) finding that agencies were delegated the "complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems…." In other words, the provisions of Title VI apply to intentional discrimination as well as practices and policies that, while on the face are neutral, nonetheless tend to have a discriminatory effect. Regardless of a defendant's motives, if plaintiffs could show a definitive, measurable impact – or some uneven treatment resulting in disparate impacts, discrimination could be logically argued. While a defendant could counter the charge by showing that it had a legitimate, nondiscriminatory reason for its action, the plaintiff could indicate there were other feasible, less discriminatory alternatives that could achieve the same purpose. These arguments for disparate or disproportionate impacts were less burdensome than an equal protection claim that requires a proof of intentional discrimination. Was a proposed freeway being depressed and sound walls constructed for one community and not another? Was a rail line being constructed for suburban passengers in one location but elsewhere in the system bus fares (used predominately by people of color) were going to be hiked? Has aesthetics surfaced as a community concern? Will the project result in displacement of a public facility or community center important to a particular segment of the community (e.g., place of worship)? These and other examples, may appear to be disproportionate in their effects, intentional or not.

Ironically, another (and recent) U.S. Supreme Court decision involving Title VI also invokes the name Alexander (*Alexander v. Sandoval)*. In a 5-4 decision rendered on April 24, 2001, the highest court held private citizens have no cause of action against states for implementing policies or programs that have a discriminatory impact under Title VI. Title VI prohibits discrimination whether intentional or unintentional (disparate impact) by entities receiving federal funds, including state and local governments. The high court, in an opinion written by Justice Scalia, said there was nothing in the law to demonstrate Congress intended to create a private right of action to enforce the disparate impact provisions. That means any lawsuit alleging disparate impact must now be brought by the federal government, and environmental justice grassroots plaintiffs are relegated to pursuing the more difficult to prove claim that the discrimination was intentional. Heretofore, virtually all the lawsuits that have been brought so far claimed disparate impact.

Executive Order 12898 and its relation to NEPA

President Clinton signed Executive Order (EO) 12898 on February 11, 1994, establishing the Clinton administration's position on environmental justice and directing federal agencies to take potentially disparate environmental and health impacts into account in their decision-making processes.

Each federal agency was required to develop within one year an environmental justice strategy on how it was going to identify address the disproportionately high and adverse effects of its programs, policies and activities on minority and low-income populations. An interagency working group, chaired by the EPA Administrator, would oversee the Federal government's implementation of the EO and conduct public meetings for conducting inquiries into environmental justice.

In the memorandum accompanying the issuance of EO 12898 to the heads of all departments and agencies, the President specifically recognized the importance of procedures under the National Environmental Policy Act (NEPA) of 1969 for addressing environmental justice concerns. Just as the Civil Rights Act is the root of federal non-discrimination policies, NEPA is the cornerstone of most environmental policies and establishes the definition for "significant" and "adverse" for impact assessment purposes. The memo particularly underscored the importance of NEPA's public participation process, directing that "each Federal agency shall provide opportunities for community input in the NEPA process." Agencies are further directed to "identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices."

The EO provides for federal agencies to collect, maintain, and analyze information on patterns of subsistence consumption of fish, vegetation, or wildlife by low-income populations, minority populations, and Indian tribes, and, as appropriate, for the agencies to indicate and publish guidance on methods for evaluating the potential for disproportionately high and adverse risks from consuming pollutant-bearing fish or wildlife.

The EO recognizes the importance of research, data collection, and analysis, particularly with respect to multiple and cumulative exposures to environmental hazards for low-income populations, minority populations, and Indian tribes. Thus, data on these exposure issues should be incorporated into NEPA analyses as appropriate.

Incidentally, no separate legal rights or remedies were created by the issuance of EO 12898. Instead, the executive order was essentially aimed at improving the "internal management of the executive branch."

As such, the EO is not enforceable in court. Thus, litigation on environmental justice grounds is typically within the framework of a civil rights violation.

CEQ Guidance

The Council on Environmental Quality (CEQ), an advisory body under the Executive Office of the President, has oversight of the Federal government's compliance with EO 12898 and NEPA. CEQ developed guidance for implementing environmental justice as part of NEPA on December 10, 1997.

CEQ defined "low-income populations" as those identified with the annual statistical poverty thresholds from the Bureau of Census. It defined "minority" as the following population groups: "American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic." In identifying "minority communities," the EO indicated agencies could consider either a group living in geographic proximity to one another, or were a "geographically dispersed/transient set of individuals (such as migrant workers or Native American)." In California, with some 700,000 migrant farm workers and some 200,000 Native Americans, these dispersed populations counted for large numbers of people**.**

CEQ acknowledged that agencies should be aware that environmental justice issues are highly sensitive to the history or local circumstances surrounding a particular community, the affected population groups, the specific type of environmental or human health impact, and the nature of the proposed action, itself.

As expressed in the CEQ Guidance, EO 12898 does not change the prevailing legal thresholds and statutory interpretations under NEPA and existing case law. For example, for an Environmental Impact Statement (EIS) to be required, a sufficient impact on the physical or natural environment needs to be found "significant" within the meaning of NEPA. And, under NEPA, the identification of a disproportionately high and adverse human health or environmental effect on a minority population or low-income population does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory. In other words, when a Federal action only causes socioeconomic effects on the human environment, preparation of an EIS is not required. Rather, the identification of such an effect should heighten agency attention to alternatives, mitigation strategies, monitoring needs, and preferences expressed by the affected community or population.

Applying the concept of environmental justice in environmental documents presented substantial technical and conceptual challenges for federal agency staff and their consultants. Neither the EO or CEQ's guidance prescribed any specific report format for analyzing environmental justice, such as designating a specific chapter or section within an EIS or Environmental Assessment. Agencies were instructed to incorporate their examination of environmental justice concerns in an appropriate manner so as to be clear and concise within the general format suggested by 40 CFR 1502.10.

As they have come to be developed, many environmental justice analyses consist broadly of a twopronged test. First, a determination is made as to whether social, economic, or environmental effects are likely to occur as a result of the proposed action or project. Second, a community profile of the potentially affected area is developed to determine the presence of protected populations.

So as to determine if "high and adverse" impacts would be borne disproportionately on minority or lowincome populations, it is necessary to define how many minority or low-income people it takes to constitute a "population." CEQ's Guidance provides two alternative definitions for minority populations: (a) "the minority population of the affected area exceeds 50 percent, or (b) "the minority population

percentage of the general population or other appropriate unit of geographic analysis." No available federal guidance addresses how many low-income people it takes to constitute a low-income population. In actual practice, analysts preparing NEPA documents commonly apply the above definitions to both minority and low-income populations.

Data Requirements

EPA suggests that the concepts behind "disproportionate" and "high and adverse" requires analysts to exercise informed judgments and conduct a level of comparative analysis with the conditions faced by an appropriate comparison population. A simple rule of thumb for establishing appropriate benchmarks for judging the proportionality of a particular impact is to draw a demographic comparison to the next larger geographic area in order to place population characteristics in context. For example, depending on the type of project, a community might be juxtaposed against county statistics; census block data might be compared with that of adjacent census tracts.

One of the initial questions asked by those new in conducting environmental analysis on community impacts is, how can populations be accurately determined for a given area? U.S. Census data can be useful for determining minority populations, particularly in non-rural locations. Census data is available at the tract, block, and block group level. The size of an area potentially impacted must be carefully identified, as it will influence which statistical information may be more reliable. There has been some difficulty in gathering reliable and up- to-date Census data at a sufficient level of precision to compare alternatives that lie within the same tract or other geographic unit for which statistical data is available. Commercial database firms, as well as certain Metropolitan Planning Organizations (MPOs), are often capable of tailoring census data information on protected populations for specified areas of geographic detail. The use of maps, aerial photographs, and geographic information systems are among the tools that might be profitably used for gathering information.

Even with the best efforts and intentions, an environmental planner should not solely rely on data and maps. Get out from behind the desk and computer screen! Because of population pockets that might still be overlooked within a larger predominately white community, however, other approaches, including conducting outreach to community and church leaders, contacting social service organizations, conducting observations in the field, and using locally targeted media, are always strongly recommended, to name but a few avenues for obtaining relevant information for purposes of environmental justice analysis.

A people of color population might not be concentrated in one area but may still be affected if a natural resource, which is vital to their subsistence, is impacted. An example might be a traditional gathering site used by Native Americans or a creek where former Southeast Asians fish. This community knowledge may be best gained by soliciting public involvement.

For those who have experience in environmental impact assessment, determining when human health or environmental effects on people should be considered adverse, is fairly straightforward. On the other hand, at what point is the adverse effect considered "high?" Federal guidance from EPA and CEQ are silent on this issue, though some federal agencies internal orders for addressing environmental justice have taken the terms "high and adverse impacts" to be equated with "significant adverse impacts."

But even with good information on nearby affected populations, and a growing body of literature for evaluating adverse impacts on communities, how does an environmental analyst determine that an impact on one population group is *disproportionately* high and adverse? Is the science yet so refined?

Quantifying the potential for disproportionate impacts requires efforts to avoid statistical biasing, determining when an impacted population is "meaningful greater" than the general population, and distinguishing between "populations" (in the words of EO 12898) and communities or neighborhoods. Up to this point, there has been no cookbook created to guide planners in these areas, though efforts by agencies (through research contracts) have certainly begun.

CEQ Guidance indicates when a disproportionately high and adverse human health or environmental effect is found to involve a low-income population, minority population, or Indian tribe, it is appropriate for agencies to seek from these groups (and in the case of federally-recognized Indian Tribes, actually sovereign governments) to help develop and comment on a range of possible alternatives to the proposed action. Ideally, this solicitation should occur as early as possible in the planning process, in the desire to provide meaningful input that may effect real change. The Guidance indicates, "the distribution as well as the magnitude of the disproportionate impacts in these communities should be a factor in determining the environmentally preferable alternative."

In the absence of prescriptive formulas for analyzing environmental justice, recent evaluations, whether conducted by agency staff or consultants, have tended to rely on traditional socioeconomic (often also called community impacts assessment) and environmental assessment methods to determine significant effects on people. Environmental justice activists have criticized such traditional studies for:

- using incomplete, unreliable, or irrelevant data
- failing to obtain input from the affected populations
- presenting information in a jargon-laden, and highly technical manner
- failing to keep in mind community goals and the priorities of diverse social groups

Issues that raise concerns of environmental justice are by nature rife with contention and emotion. Therefore, when selecting analytical techniques, whether they are based on statistical analysis, case studies of similar actions in other locations, or visual imaging, to name a few, the environmental planner must carefully consider how the results will be communicated to and utilized by the general public. Environmental justice assessment methods must also incorporate community involvement efforts to identify the public's perception of potential project impacts.

Public Participation

Public involvement is required by the CEQ NEPA regulations. Consequentially, agencies should make a "diligent" effort to establish early and sustained communications with the affected community beginning at the project screening stage and continuing through the entire process. In particular, community involvement fills an integral role in evaluating the significance of impacts, identifying possible alternatives, and developing creative avoidance, minimization, mitigation, and project compatibility opportunities.

If the project looks to potentially affect minority populations, low-income populations, or Indian tribes, a strategy for effective public involvement is essential. Communications should be tailored to the affected stakeholders, and promoting an open dialogue with representatives from religious organizations, minority business associations, legal aid providers, schools, tenants' groups, and tribal governments, among others, should be strongly considered. This also may mean that all notices, information, public hearing documents, findings, and environmental documents be translated into one or more languages to meet the notice requirements. In *El Pueblo Para el Aire Y Agua Limpio v. County of Kings*, the court determined

that Spanish-speaking residents were "precluded by the absence of the Spanish translation" from any meaningful participation in the review process of an incinerator project to be located a few miles from their community. And, be aware that many immigrants from former repressive or communist countries (e.g., North Korea) do not inherently trust the government.

California and Environmental Justice Legislation

California has not one but two specific environmental justice laws on the books, but neither one specifically references the California Environmental Quality Act (CEQA). And though in many respects California has just recently begun the process of formally incorporating the concept of environmental justice into its programs and activities, at least some CEQA practitioners correctly point out that the State's overarching environmental law does indeed not only allow for, but requires the analysis of impacts on communities.

Though environmental documents present social and economic data in the "Setting" section, too infrequently the information is presented pro forma, and arguably did not go on in other sections of the report to adequately document potential project impacts on the human environment and further how they might be avoided or mitigated. There are probably a host of reasons for this, but certainly some analysts have the impression that CEQA addresses only "environmental" issues, not the social, demographic, or economic issues raised by environmental justice concerns. This impression has its roots in that CEQA requires only that physical changes in the environment be discussed (CEQA Guidelines Section 15358(b)). The CEQA Guidelines, however, expressly address social and economic effects by authorizing the analysis of such effects in determining the significance of a physical change caused by the project. According to the Guidelines at Section 15131(b): *for example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant*.

Furthermore, an agency *shall* determine that a project may have a significant effect on the environment if the project will cause "substantial adverse effects on human beings, either directly or indirectly. (CEQA Guidelines Section 15065(d)). Some CEQA practitioners, therefore, have suggested this language was not direct enough on the need to analyze the anticipated effects of proposed actions on human health and the environment. Recognition of these limitations led some community and environmental organizations to seek legislative change in Sacramento.

Environmental Justice legislation had been introduced in earlier California legislative sessions, including several which were vetoed by the Governor: AB 937 of 1991, AB 3024 of 1992, and SB 451 of 1997. SB 1113 of 1997 would have amended CEQA Guidelines to require lead agencies to identify and mitigate disproportionate impacts on minority and low-income populations. In his veto message Governor Pete Wilson expressed that CEQA is already "colorblind" and "was not designed to be used as a tool for a social movement."

Meanwhile, absent mandates from either the State of California or the Federal government, some regional agencies and local governments in California have taken steps to incorporate environmental justice principles into their operations. For example, the South Coast Air Quality Management District in 1997 and the Bay Area Air Quality Management District in 1999 each adopted a set of guiding principles on environmental justice to promote equal enforcement activities, informing the public of findings concerning public health, and working proactively to improve air quality in their respective regions, among others. Several years ago the City of Los Angeles inserted language concerning environmental equity in their general plan and Contra Costa County has passed an ordinance addressing environmental justice considerations as they related to certain permitting decisions. But for the most part, these local initiatives towards articulating policies to achieve environmental equity were sporadic.

Governor Gray Davis has signed two environmental justice bills in the first half of his current term in office. And, while we often perceive ourselves to be on the cutting edge, and contrary to some statements, California is not the only state with environmental justice legislation. A recent report, "Environmental Justice: A Review of State Responses," by UC Hastings College of Law's Public Law Research Institute (December 2000) noted that the states of Florida, Maryland, New Jersey, New York, Oregon, and Tennessee were especially active in this arena.

Neither of the two California laws specifically mentions CEQA or the general plan law. In October 1999, Davis signed SB 115 (Solis) into law which codified the definition of environmental justice, and established the Governor's Office of Planning and Research (OPR) as the lead agency for implementing environmental justice programs within the State of California. The bill further required the California Environmental Protection Agency (Cal-EPA) to take specified actions in designing its mission for programs, policies, and standards within the agency, and to develop a model environmental justice mission statement for its boards, departments, and offices.

Davis signed SB 89 (Escutia), a companion bill, in September 2000. The law required the Secretary for Environmental Protection to convene a working group (supported by an advisory committee) before January 15, 2002 to assist Cal-EPA in developing an interagency strategy for identifying and addressing any gaps in existing programs, policies or activities that might hinder the goal of achieving environmental justice and making recommendations on translating environmental documents and policies for limited English-speaking populations. Passage of AB 1740 (2000-01 Budget) created an Assistant Secretary for Environmental Justice within Cal-EPA.

OPR serves as the information and referral bank for all state-agency based environmental justice programs and is currently developing a database on pertinent information. According to Heather Halsey, Environmental Justice Coordinator for the State, as part of its efforts to revise the general plan guidelines, OPR is considering drafting guidance for city and county governments on preparing an optional element on environmental justice, should they choose to do so. Discussion is on-going; one question is whether environmental justice should be presented in a separate optional general plan element (spotlighting the importance of the subject) or rather should the principles behind environmental justice be incorporated holistically throughout all the relevant elements (e.g. circulation, housing, land use, etc.). One current bill, AB 1553 (Keeley), would stop speculation within OPR as to how it might create guidelines for an optional element by requiring it to adopt guidelines for addressing environmental justice in the land use element of the local general plans. According to the bill's author (as contained in the Senate's analysis), "State law focuses exclusively on addressing environmental justice issues at the state level. There is no state policy or guidelines to address these issues at the local level . . . AB 1553 helps to provide guidance to local agencies trying to [address] this issue."

So, while institutional responses to issues surrounding environmental justice are likely to continue evolving for the next many years, it is incumbent for the environmental planner working in California to keep in mind several things when analyzing proposed projects:

- • Give explicit consideration to the varying project effects on diverse populations
- • Rely on existing data sources to the extent possible, but understand their limitations
- • Be responsive to, respectful of, and honest with, all people
- • Actively promote citizen involvement among people for whom government might be otherwise threatening
- • Make special efforts to be sensitive to different cultures and etiquette of the affected populations
- • When appropriate, use community-based organizations to make linkages and facilitate communication between neighborhoods and area-wide planning
- • Recognize the limitations of traditional public hearings for creating meaningful participation
- • Use non-technical language and easy-to-understand graphics • • When avoidance of a significant impact is not likely, understand what mitigation is appropriate to offset impacts on communities

Sources of Environmental Justice Guidance

Clinton, William. February 11, 1994. *Memorandum for the Heads of All Departments and Agencies; Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and LowIncome Populations*. Presidential Documents, Vol. 30, No. 6, February 11, 1994, 279-280.

Council on Environmental Quality. Executive Office of the President. *Environmental Justice; Guidance Under the National Environmental Policy Act*. December 10, 1997

Executive Order 12898. February 11, 1994. *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. Federal Register, Vol. 59, No. 32, Wednesday, February 16, 1994, 7629-7633.

Pastor, Jr., Manuel. "Racial/Ethnic Inequality in Environmental Hazard Exposure in Metropolitan Los Angeles." *California Policy Research Center Briefing*. University of California. February 13, 2001.

U. S. Environmental Protection Agency. *Draft Title VI for EPA Recipients Administering Environmental Permitting Programs and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*. June, 2000

U. S. Environmental Protection Agency. *Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses*. April, 1998

Worden, D. Dwight. "Environmental Equity: Using California Laws in a New Way." *Land Use Forum*. Winter 1993, 18-22.

Gregory King is the Chief, Cultural and Community Studies Office with the California Department of Transportation in Sacramento. He serves on the Governor's Office of Planning and Research (OPR) steering committee for implementation of SB 89. This paper reflects the views of the author and represents neither the views, positions, nor opinions of the California Department of Transportation or OPR . He can be reached at 916.653.0647