

State Water Resources Control Board

Executive Office

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NOTICE OF PUBLIC WORKSHOP

Regarding

Subterranean Streams Flowing Through Known and Definite Channels

Commencing on April 24, 2000 at 10 a.m. and, if necessary, on April 25, 2000*

at

State Water Resources Control Board

Paul R. Bonderson Building

First Floor Hearing Room

901 P Street, Sacramento

*The SWRCB will convene on this day only if there is insufficient time on the previous day
for all participants to comment.

SUBJECT OF WORKSHOP

The State Water Resources Control Board (SWRCB) will hold a public workshop to gather information regarding the test for classifying subterranean streams flowing through known and definite channels (subterranean streams).

BACKGROUND

Pursuant to the provisions of the Water Code governing water subject to appropriation, the SWRCB has permitting authority over surface streams and groundwater classified as subterranean streams.

(Wat. Code, § 1200.) Groundwater classified as percolating groundwater is not subject to the Water Code provisions concerning the appropriation of water, and consequently, the SWRCB does not have permitting authority over percolating groundwater. Thus, when considering an appropriation of groundwater, the SWRCB may have to evaluate the legal classification of the groundwater and determine whether it is a subterranean stream subject to the SWRCB's permitting authority.

In determining the legal classification of groundwater, the SWRCB and its predecessors have relied on the California Supreme Court's decision in *Los Angeles v. Pomeroy* (Pomeroy) (1899) 124 Cal. 597 [57 P. 585], which established the distinction between subterranean streams and percolating groundwater. (See, e.g., SWRCB Decisions 119 (1926), and 1639 (1999) (citing Pomeroy).) In Pomeroy, the court noted that proof of the existence of a subterranean stream is shown by evidence that the water flows through a known and defined channel. (Pomeroy, supra, 124 Cal.3d. at 633-634 [57 P. at 598].) The court stated: " 'Defined' means a contracted and bounded channel, though the course of the stream may be undefined by human knowledge; and the word 'known' refers to knowledge of the course of the stream by reasonable inference." (Id. at 633 [57 P. at 598].)

The SWRCB has interpreted Pomeroy and other applicable precedents to require that the following physical conditions exist for groundwater to be classified as a subterranean stream flowing through a known and definite channel:

1. A subsurface channel must be present;
2. The channel must have relatively impermeable bed and banks;
3. The course of the channel must be known or capable of being determined by reasonable inference; and
4. Groundwater must be flowing in the channel.

The SWRCB elaborated on these conditions in Decision 1639 (1999), and has considered them in its earlier decisions. (See, e.g., SWRCB Order 95-10 (1995) (determining that a subterranean stream exists based on evidence that relatively impermeable rocks form the bed and banks of a known and definite channel); SWRCB Decision 1589 (1982) (finding jurisdiction based on evidence of subsurface flow within well-defined bed and banks); SWRCB Decision 119 (1926).)

ISSUES

1. What legal test should the SWRCB apply in determining whether subsurface waters should be classified as part of a subterranean stream or percolating groundwater?
2. What information should the SWRCB consider when determining whether subsurface waters are part of a subterranean stream or are percolating groundwater?
3. Should the SWRCB propose rules or guidance for the classification of which subsurface waters are subject to the water right permitting and licensing system administered by the SWRCB? If so, should the SWRCB propose or establish those rules or guidance through administrative rulemaking, as a proposal for legislation, in a precedent decision, or through other means?

PROCEDURAL MATTERS

This is an informal workshop. There will be no sworn testimony or cross-examination of participants, but the SWRCB and its staff may ask clarifying questions.

Participants are requested to provide the SWRCB with 16 copies of their written comments and supporting materials by 5:00 p.m. on Tuesday, April 18, 2000. Additional copies for participants of the workshop should be provided to the SWRCB on the day of the workshop.

Participants are encouraged to summarize their written comments in their oral presentations. To ensure that all participants have an opportunity to participate in the hearing, oral presentation will be limited to 10 minutes. Participants with similar comments are requested to make joint presentations. All participants are requested to avoid redundant testimony.

PLEASE NOTE: The purpose of this informational workshop is to gather information for the SWRCB to consider when evaluating a test of statewide applicability for the legal classification of subterranean streams. A decision determining the legal classification of groundwater in the Pauma and Pala Basins of the San Luis Rey River is pending before the SWRCB and already has been the subject of a SWRCB workshop. This informational workshop is not intended to reopen the hearing record created during the SWRCB's 1997 hearing on the Pauma and Pala Basins of the San Luis Rey River and may not be used to augment the evidence submitted during that hearing. Any communication to the SWRCB that specifically addresses either the Pauma or Pala Basins must be in writing and must be copied to the parties in the San Luis Rey matter. Those parties are listed in the attachment to the mailing list. As stated previously, any such submittal will not be placed into the previously closed hearing record.

PARKING AND ACCESSIBILITY

The enclosed map shows the location of the Paul R. Bonderson Building in Sacramento. Public Parking is available in the State Garage on 10th Street between O and P Streets, in metered spaces on area streets, and in the public parking garages on L Street between 10th and 11th Streets and on P Street between 11th and 12th Streets. The First Floor Hearing Room is accessible to persons with disabilities.

Questions concerning this notice may be directed to Ms. Julie Chan, Senior Engineering Geologist, at (916) 657-1992 (FAX (916) 657-1485), or to Ms. Erin Mahaney, Staff Counsel, at (916) 657-1472.

SIGNED BY:

Maureen Marché
Administrative Assistant to the Board

Dated: March 15, 2000