

April 24, 2000



Mr. Arthur Baggett, Jr.
Chairman
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

**Re: Public Workshop Regarding Subterranean Streams Flowing
Through Known and Definite Channels**

Dear Chairman Baggett and Members of the Board:

The Association of Groundwater Agencies (AGWA) submits these comments for the public workshop regarding the subterranean streams flowing through known and definite channels. We understand this workshop to be related to the State Water Resources Control Board's authority, under existing law, to determine if groundwater is subject to its jurisdiction, as a subterranean stream as defined by this Board.

AGWA is a non-profit public benefit corporation formed in 1995. The members of AGWA include more than 15 public entities, which, either by court judgment or statute, are charged with responsibility for management of groundwater basin resources within an area stretching from Kern County to southern Orange County. Within the area managed by AGWA members are approximately 50 separate and distinct groundwater basins, which are a crucial part of the water needs of well over 20 million people of this State.

AGWA has grave concerns over the direction this Board is heading regarding the classification and definition of subterranean streams. The preliminary indications coming from this Board governing its jurisdiction over groundwater is so expansive that it could potentially subject all unadjudicated groundwater basins in the State, including groundwater that has generally been understood to be percolating groundwater, to State Board regulation.

This Board seems to be suggesting that a basin or aquifer may be deemed a subterranean "channel," subject to the Board's jurisdiction, regardless of its width or depth to the bedrock. Indeed, waters deemed to flow in a direction "roughly perpendicular to the bed of the channel" would be within this Board's jurisdiction. A final determination based upon this logic would be clearly inconsistent with numerous judicial decisions restricting State Board jurisdiction to flows within a known and defined subterranean channel and are contrary to the clear intent of the Legislature's definition of "subterranean stream."

Members:

- Chino Basin
Watermaster
- Eastern Municipal
Water District
- Kern County
Water Agency
- Main San Gabriel
Basin Watermaster
- Mojave Water Agency
- Orange County
Water District
- Raymond Basin
Management Board
- San Bernardino Valley
Water Conservation District
- Tehachad-Cummings
County Water District
- Upper Los Angeles
River Area Watermaster
- Water Replenishment
District of Southern
California
- Western Municipal
Water District
- Affiliates:**
- Basic Compliance
Engineering
- Bookman-Edmonston
Engineering, Inc.
- CH2M Hill
- City of Riverside
- Kortex H2O Science
- Metropolitan Water District
of Southern California
- Montgomery Watson
- Narvor Associates
- Psomas and Associates
- San Gabriel River
Water Committee
- Stetson Engineers Inc.

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Additionally, the view of this Board's jurisdiction appears to be contrary to clear legislative and judicial policy establishing a framework for local management and control over groundwater resources. Years of substantial effort and significant expense have been devoted by groundwater agencies throughout the State to develop and establish those resources necessary to effectively manage groundwater at the local level, under the assumption that groundwater was not located in a subterranean stream. Those efforts could well have been in vain if this Board decides to exercise jurisdiction in this area. This workshop should result in a State Board policy that its jurisdiction over groundwater resources shall not be disruptive of legislatively mandated programs.

Finally, there are a number of adjudicated groundwater basins throughout Southern California where the legal classification of groundwater has been litigated and determined by the trial courts. The findings of this workshop and then the decision of this Board must make it very clear that only realistic and scientifically supported data must be utilized in determining what constitutes a subterranean stream. While AGWA recognizes that this Board possesses concurrent jurisdiction with the trial courts *National Audobon Society v. Superior Court* (1983) 33 Cal.3d 419, 449, 451, once the trial court assumes jurisdiction over a controversy, it takes exclusive jurisdiction, and another tribunal is prohibited from later entering a determination over that subject matter. *Halpin v. Superior Court* (1971) 14 Cal.App.3d 530, 545; *Myers v. Superior Court* (1946) 75 Cal.App.2d 925, 929. Thus, any attempt by the State Board to relitigate classification of groundwater already adjudicated by the trial court would violate the doctrines of concurrent jurisdiction, collateral estoppel and res judicata. *DeWeese v. Unick* (1980) 102 Cal.App.3d 100, 105; *Smith v. Golden Eagle Ins. Co.* (1999) 69 Cal.App.4th 1371. Subsequent litigation over previously tried and finalized issues would result in vexatious constantly recurring litigation and threaten to undermine previously settled classifications of groundwater that have served as the basis for comprehensive planning and management of groundwater resources in Southern California.

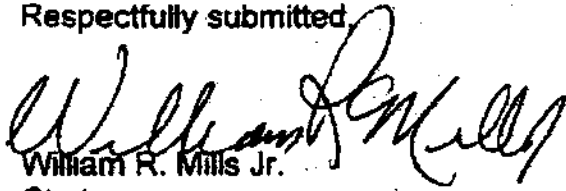
AGWA sincerely hopes that this Board will consider those cases so that there will be a consistent determination of what constitutes a groundwater basin, be it adjudicated or unadjudicated.

In order to remove the cloud of uncertainty surrounding this issue, we ask that a task force of water experts be convened to assist this Board and help complete the study on this matter. This team of experts would provide this Board with a factual and unbiased opinion of what constitutes a subterranean stream. AGWA also feels that if this process continues to proceed in the current direction as proposed by Staff, it will predictably embroil the Board in a court battle of wasteful follow-on litigation and will disrupt groundwater efforts throughout the State.

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Thank you for your attention to this important matter.

Respectfully submitted



William R. Mills Jr.
Chairman