

TR/GFW

1121 L Street, Suite 1050
Sacramento, CA 95814
916-447-7357, x 212
916-447-2734
www.swc.org



Fax

To: Greg Wilson, PE. **From:** Linda Standlee

Fax: 916-341-5400 **Pages:** 5

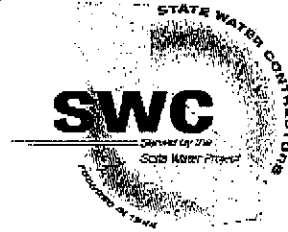
Phone: 341-5427 **Date:** February 17, 2009

Re: Comments re: Application Nos. 6587 and 8338 **cc:** Monique de Barruel
West Yost Associates
For Property Reserve California, Inc.
Fax: 530-756-5991

Urgent For Review Please Comment Please Reply Please Recycle

● **Comments:** Attached are comments of the State Water Contractors and the San Luis & Delta Mendota Water Authority regarding Notice of Petition for temporary change, Application Nos. 6587 and 8338

STATE OF CALIFORNIA
 DEPARTMENT OF WATER RESOURCES
 SACRAMENTO
 2009 FEB 17 PM 1:56



February 17, 2009

California State Water Resources Control Board
 Division of Water Rights
 c/o Greg Wilson, P.E.
 P.O. Box 2000
 Sacramento, CA 95812-2000
 FAX: (916) 341-5400

Re: Notice of Petition for Temporary Change -- Applications 6587 and 8338 (Property Reserve California, Inc./Contra Costa Water District) -- Comments of the State Water Contractors and the San Luis & Delta-Mendota Water Authority

Dear Mr. Wilson:

Pursuant to the State Water Resources Control Board's January 9, 2009, Notice concerning the above referenced Petition, the State Water Contractors (SWC) and the San Luis & Delta-Mendota Water Authority (SLDMWA) provide the following comments and objections to the Petition for Temporary Change as currently proposed.¹

1. The Amount of Water Proposed For Transfer Seems To Significantly Exceed The Historical Consumptive Use For The Crops/Lands Proposed To Be Fallowed.

For purposes of this analysis, the SWC and SLDMWA have compared the 2008 acreage farmed and the crops grown with the proposed 2009 cropping and ETAW figures set out in the Additional Information and Maps submitted by Petitioner. According to Petitioner, 2996.3 acres of land were irrigated in 2008 as follows:

Alfalfa	1176.5 Acres
Grass Hay	958.1 Acres
Pasture	738.6 Acres
Wheat/Corn Double Crop	123.1 Acres

¹ The SWC is California nonprofit corporation that represents 28 public agencies throughout the State of California that contract with the Department of Water Resources for water from the State Water Project. The SLDMWA is a joint powers authority representing 31 public agencies in the State of California who contract with the United States Bureau of Reclamation for water from the Central Valley Project. Those contractors rely on water from the Sacramento-San Joaquin Delta to meet the water needs for millions of Californians and millions of acres of prime farmland. As such, it is vital to the SWC and SLDMWA and their members that water transfers be limited to real water and structured in a manner that ensures that other legal users of water are not negatively impacted.

RECEIVED
 DIVISION OF WATER RIGHTS
 SACRAMENTO
 2009 FEB 17 PM 1:56

February 17, 2009

Page 2

Petitioner also provided four years of crop/water requirements information (1999-2002). The source for this data is indicated to be a DWR website: <http://www.landwateruse.water.ca.gov/docs/annualdata/>, however the exact data source is not indicated. The property is located in DAU 185, but the data used appears to be from DAU 192, which has generally higher unit ETAW than DAU 185. There is also no documentation in the referenced DWR website for unit ETAW for some crops in some years for DAU 185 or DAU 192, for example for sugar beets in 2001.

Notwithstanding our concern that an incorrect DAU was utilized, the SWC and SLDMWA used the average of the four years water-use data provided by Petitioner in preparing these comments. Using that approach, alfalfa requires 3.99 AFA, Grass Hay (depending on type) either 0.8 or 2.22 AFA, and Pasture 3.93 AFA. For the double cropped acreage, the SWC and SLDMWA used 2.9 AFA based on about 2.1 AFA for corn and 0.8 for wheat. Petitioner has stated that it proposes to irrigate about 1,000 acres of Alfalfa in 2009. Therefore, in determining the maximum potential transferable water, the SWC and SLDMWA assumed that, compared to 2008, there would be 186.5 less acres of alfalfa at 3.99 AFA, 958.1 less acres of Pasture at 3.93 AFA, and 123.1 less acres of wheat/corn double cropped at 2.9 AFA. For grass hay, the reduced acreage is 976.1. However, for hay, the Petition does not provide sufficient information to determine the water savings from fallowing in 2009. The table set out on page 2 of Petitioner's supplemental information letter shows that the ETAW for various types of grass hay can range from 0.8 to 2.2 AFA.

Using the reduced acreage and ETAW numbers set out above, the SWC calculates that the reduced consumptive use is approximately 5,650 acre feet if 0.8 is used for the grass hay acreage or 7,025 acre feet if 2.22 AFA is used for the grass hay acreage. These numbers may be too high if the incorrect DAU was used to compute water duties. The amount of the requested transfer, 12,494 acre feet, seems to be improperly based on diversions rather than crop consumptive use. Therefore, the SWC and SLDMWA request that, before approving this transfer, the State Board (i) require further detail from the Petitioner as to the type(s) of grass hay grown on the property, (ii) require additional documentation of unit ETAW rates for the property, (iii) notify the Petitioner that the State Board will not base the authorized transfer on comparisons of gross diversions, as contrasted to comparative consumptive use, and (iv) utilize a procedure similar to that spelled out above to determine how much water can be transferred in 2009 without impacting other legal users of Delta waters. The State Board may wish to implement this requirement in the manner set out in the recently issued Delta Wetlands Properties Order.

2. Provisions Similar to the Delta Wetlands/Metropolitan Water District of Southern California Transfer Order Should Be Included In Any Approval of this Petition.

Byron Tract is located immediately adjacent to Old River and Italian Slough. As a result, there is a significant potential, unless certain actions are taken, that lands fallowed will consume water derived from seepage to support native grasses growing in the fallowed fields. This will reduce the amount of water that can be transferred without impacting other legal users of water. The existence of this complicating factor was recently recognized by the State Board in its order approving the transfer from Delta Wetlands Properties to the Metropolitan Water District of Southern California. There, the State Board required as follows:

By April 1, 2009, petitioner shall submit to the State Water Board's Deputy Director for Water Rights a plan describing the following program. ... [Petitioner] shall prepare this plan in coordination with the Department of

February 17, 2009

Page 3

Water Resources (DWR), the United States Bureau of Reclamation (USBR) and the Department of Fish and Game. This plan shall include the following:

- a.
- b. Specific measures to control weed growth on fallowed fields;
- c. Specific measures to monitor fallowed fields to determine the actual amount of water saved through fallowing;
- d. Measures to ensure weed control does not unreasonably affect ground-nesting birds or other wildlife; and
- e.

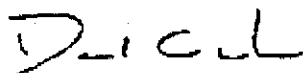
The State Water Contractors and SLDMWA request that similar requirements be placed on the subject Petition to ensure that the water derived from fallowing is not significantly reduced by the constant seepage onto Delta islands and the resulting growth of grasses that may have higher ET requirements than the crops they replace.

3. *The Transfer Must Be Limited To Times When the Petitioner Has Legal Right To Divert Water.*

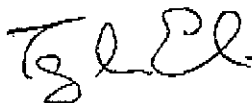
During past severe droughts, the State Board has issued notices to holders of appropriative rights, including those in the Delta, that there is insufficient water to support continued diversions under their permits or licenses. While, as this comment letter is being written, we are finally receiving some welcome storms, there is still a substantial risk that, during the late spring or summer of 2009, such notices will be needed due to severe water shortage conditions in the Delta. The SWC and SLDMWA believe it is only prudent to notify water transferors and transferees, through specific provisions in orders approving transfers, that the right to transfer will cease if the State Board determines, and so notifies water rights holders, that there is insufficient water in the Delta to allow diversions under their appropriative rights. The SWC and SLDMWA request that such language be included in any Order issued for this water transfer.

The SWC and SLDMWA appreciate the opportunity to comment on this Petition and is willing to work with State Board staff and the Petitioner and transferee to develop a transfer that can be approved in a manner that does not further threaten the water supply of the State Water Project and the Central Valley Project in this year of already dangerously low allocations.

Sincerely,



Daniel G. Nelson
Executive Director
San Luis & Delta-Mendota Water
Authority



Terry Erlwine
General Manager
State Water Contractors

PROOF OF SERVICE BY PERSONAL DELIVERY

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1121 L Street, Suite 1050, Sacramento, California 95814. On February 17, 2009, I personally served:

Letter Re: Notice of Petition for Temporary Change for
Applications 6587 and 8338 [Property Reserve California
Inc./Contra Costa Water District]
Comments of State Water Contractors and San Luis & Delta-
Mendota Water Authority

by delivering copies thereof to

Division of Water Rights by fax and personal service
c/o Greg Wilson, P.E.
P.O. Box 2000
Sacramento, CA 95812-2000
Fax: (916) 341-5400

Property Reserve California, Inc. by fax
c/o Monique de Barruel, P.E.
West Yost Associates
2020 Research Park Drive, Suite 100
Davis, CA 95618
Fax: (530) 756-5991

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 17, 2009, at Sacramento, California.