

**SOUTH DELTA WATER AGENCY** STATE WATER RESOURCES CONTROL BOARD

4255 PACIFIC AVENUE, SUITE 2

STOCKTON, CALIFORNIA 95207

TELEPHONE (209) 956-0150

FAX (209) 956-0154

E-MAIL Jherrlaw@aol.com

08 JUN 25 AM 10: 07

DIV. OF WATER RIGHTS  
SACRAMENTO

Directors:

Jerry Robinson, Chairman  
Robert K. Ferguson, Vice-Chairman  
Natalino Bacchetti  
Jack Alvarez

Engineer:

Alex Hildebrand  
Counsel & Manager:  
John Herrick

June 25, 2008

**Hand Delivered**

Mr. Greg Wilson  
Water Resource Control Engineer  
Division of Water Rights  
1001 I Street  
P. O. Box 2000  
Sacramento, CA 95812-2000

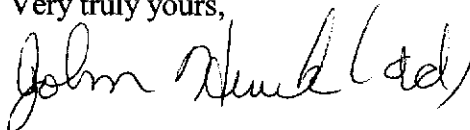
Re: Island Reclamation District No. 2062 Petition for Temporary Transfer - Phelps

Dear Mr. Wilson:

Enclosed please find the Petition for Temporary Permit Change I am submitting on behalf of the Island Reclamation District 2062 (Stewart Tract). This Petition is to allow a transfer of water from the District to Lloyd and Gary Phelps, who I represent. Also enclosed are two checks, one in the amount of \$2,237 made out to the SWRCB for the filing of the petition, and the other in the amount of \$850 made out to DFG as required.

Please expedite the review and processing this Petition, and let me know if you have any questions or require any additional information.

Very truly yours,



JOHN HERRICK

Enclosures

State of California  
 State Water Resources Control Board  
**DIVISION OF WATER RIGHTS**  
**P.O. Box 2000, Sacramento, CA 95812-2000**  
 Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

**PETITION FOR TEMPORARY TRANSFER  
 OF WATER/WATER RIGHTS**

(Water Code 1725)

Point of Diversion     Point of Rediversion     Place of Use     Purpose of Use

Application No(s). 5155    Permit No. 2720    License No. 2637

Statement or Other No. \_\_\_\_\_

***Present Holder and User of Water Right***

ISLAND RECLAMATION DISTRICT 2062	SUSAN DELL'OSSO, PRESIDENT	(209) 879-7900
Person or Company name	Contact person	Telephone No.
73 WEST STEWART	LATHROP	CA
Address	City	State
sdelosso@cambaygroup.com		95330
		Zip Code
E-MAIL (For noticing purposes)		

***Co-petitioner***

Person or Company name	Contact person	Telephone No.
Address	City	State
		Zip Code
E-MAIL (For noticing purposes)		

***Proposed New User***

LLOYD PHELPS and GARY PHELPS	LLOYD PHELPS	(209) 462-5952
Person or Company name	Contact person	Telephone No.
12775 SOUTH ROBERTS ROAD	STOCKTON	CA
Address	City	State
Jherlaw@aol.com (e-mail of attorney for new user)		95206
		Zip Code
E-MAIL (For noticing purposes)		

I (We) hereby petition the State Water Resources Control Board (State Water Board) under the provisions of Water Code (WC) section 1725 et seq. and in conformance with the specific requirements of California Code of Regulations (CCR) section 794 for temporary change(s) to the water right application(s) noted above for the purpose of transferring water. The changes are **shown on the accompanying map and described as follows:**

**Amount of Water to be Transferred** 800 Acre-feet (AF). If the basis of right is direct diversion, the average rate of diversion for the maximum 30 day period of use is 4.59 cubic feet per second (cfs).

**Period of Transfer/Exchange** (Not to exceed one year) Aug. 15, 2008 - Nov. 15, 2008

**Point of Diversion or Rediversion** (Give coordinate distances from section corner or other ties as allowed by CCR section 715, and the 40-acre subdivision in which the present & proposed points lie.

Present See attached.  
 Proposed See attached.

*[Handwritten notes and signatures]*

**Place of Use**

Present Stewart Tract

Proposed Upper Roberts Island

**Purpose of Use**

Present Agricultural irrigation

Proposed Agricultural irrigation

	<i>Season of Use</i>	<i>Direct Use (cfs)</i>	<i>Storage (ac-ft)</i>
Present	<u>Jan. 1 - Dec., 31</u>	<u>49.24</u>	<u>N/A</u>
Proposed	<u>Aug. 15 - Nov. 15</u>	<u>4.59</u>	<u>N/A</u>

The proposed transfer/exchange water is presently used or stored within the county/counties of:  
San Joaquin

The proposed transfer/exchange water will be placed to beneficial use within the following county/counties:  
San Joaquin

- 1a. Would the transfer/exchange water have been consumptively used or stored in the absence of the proposed temporary change (See WC 1725)? YES  
(yes/no)
- 1b. Provide an analysis which provides documentation that the amount of water to be transferred/exchanged would have been consumptively used or stored in the absence of the proposed temporary change.
- 2a. If the point of diversion/diversion is being changed, are there any person(s) taking water from the stream between the present point of diversion/diversion and the proposed point? YES  
(yes/no)
- 2b. Are there any persons taking water from the stream between the present point of diversion or return flow and the proposed point of diversion or return flow? YES  
(yes/no)
- 2c. If the answer to 2a. or 2b. is yes, provide the name and address. Also provide the name and address of other persons known to you who may be affected by the proposed change.  
See attached.
- 3a. Provide an analysis of any changes in streamflow, water quality, timing of diversion or use, return flows, or effects on legal users resulting from the proposed transfer/exchange. See attached.
- 3b. State reasons you believe the proposed temporary change will not injure any legal user of the water, see Water Code Section 1727 (b)(1). See attached.
4. Consult with staff of the applicable Regional Water Quality Control Board concerning the proposed temporary change. State the name and phone number of person(s) contacted. Summarize their opinion concerning compliance with CCR 794(b) and any Regional Board requirements. See attached.
- 5a. Consult with the California Department of Fish and Game pursuant to CCR 794(b) concerning the proposed temporary change. State the name and phone number of the person(s) contacted and their opinion concerning the potential effect(s) of the proposed temporary change on fish, wildlife, or other instream beneficial uses, and state any measures recommended for mitigation. See attached.

- 5b. Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water (See WC 1707)? Yes  
(yes/no)
- 5c. Provide an analysis of potential effect(s) on fish, wildlife, or other instream beneficial uses which may arise from the proposed change. See attached.
- 5d. State reasons you believe the proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses, see Water Code Section 1727 (b)(2). See attached.
- 6a. Does any agency involved in the proposed transfer/exchange rely upon section 382 of the Water Code to allow the delivery of water outside of the agency's service area? No.  
(yes/no)?
- 6b. If yes, provide an analysis of the effect of the proposed transfer/ exchange on the overall economy of the area from which the water is being transferred. \_\_\_\_\_

A TRANSFER/EXCHANGE UNDER WATER CODE SECTION 1725 INVOLVES ONLY THE AMOUNT OF WATER WHICH WOULD HAVE BEEN CONSUMPTIVELY USED OR STORED IN THE ABSENCE OF THE PROPOSED TEMPORARY CHANGE. A CHANGE WILL BE EFFECTIVE FOR A PERIOD OF ONE YEAR OR LESS, BEGINNING ON THE APPROVAL OF THIS PETITION OR ON SUCH DATE OTHERWISE SPECIFIED BY THE SWRCB ORDER. FOLLOWING EXPIRATION OF THIS TEMPORARY CHANGE, ALL RIGHTS AUTOMATICALLY REVERT TO THE PRESENT HOLDER BY OPERATION OF LAW.

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.

Dated: 6/24/08 at Lehi, OR, California  
Susan De (209) 879-7900  
 Signature(s) Telephone No.

**NOTE:** This petition shall be accompanied by all information and fees required by this form and W.C. Section 1725 et. seq, before the SWRCB will consider acceptance of the petition requesting a temporary change to facilitate a transfer/exchange.

**Proof of Service:** Compliance with W.C. section 1726(c) shall be met by the filing of copies of the proof of service to the Department of Fish and Game and to the board of supervisors of the counties where the water is currently used and the counties to which water is proposed to be transferred.

**Fees:** The following fees must accompany the petition before the petition will be accepted:

1. A minimum filing fee of \$100, for each application listed in the petition, shall be submitted with the petition (Water Code section 1547). The fee is made payable to the State Water Resources Control Board.
  - a) Water Code section 1547.1 requires an additionally fee of 25% of the amount computed by using the fee schedule in Article 1 (commencing with Water Code section 1525) for use of water outside of the basin from which the water transfer originates. The fee is based on that portion of water transferred under the existing direct diversion or storage right(s) for each application identified in the petition. For direct diversion rights, the rate is typically computed based on the average rate of diversion (cfs) for the maximum 30-day period of use (AF).
  - b) If the petitioner relies on Water Code section 382, the total filing fee shall be based on the amount necessary to cover the reasonable costs of the SWRCB to evaluate and process the petition (Water Code section 386). Please contact the Division if you would like an estimate of the potential cost.
2. An \$850 environmental filing fee, made payable to the Department of Fish and Game, must accompany a petition for change (Public Resources Code 10005).

**INFORMATION REGARDING  
FILING FEES FOR  
TEMPORARY TRANSFERS**

**INITIAL FILING FEE**

Initial filing fee = \$100 X (number of Applications)

**IN BASIN WATER RIGHT TRANSFER FEE**

No Additional Fee

**OUT OF BASIN WATER RIGHT TRANSFER FEE**

OUT OF BASIN TRANSFER FEE = 25% of the direct diversion and/or storage fee calculated below.

**For direct diversion water rights:** each cubic foot per second (cfs) or fractional cfs rounded up to the next whole cfs to be transferred shall be assessed the following fees:

from 0 to 100 cfs	_____ cfs	@ \$10.00 each
over 100 to 500 cfs	_____ cfs	@ \$12.00 each
over 500 to 2,000 cfs	_____ cfs	@ \$15.00 each
over 2,000 cfs	_____ cfs	@ \$20.00 each

Where the amount to be transferred is identified in acre-feet, the rate of diversion 'cfs' shall be computed based on the average rate of direct diversion for the maximum 30-day period of use in which water is either developed or transferred, which ever is greater.

**Example:** If the amount of the water right is 6 cfs, by direct diversion from May 1 through October 31: and, the amount to be transferred will be 1,500 acre-feet (af) for the year; and, the maximum amount of water delivered is 300 af during July;

The fee is based on :  $\frac{300 \text{ af}}{30 \text{ days}} \cdot \frac{1}{1.98 \text{ af/cfs}} = 5.05 \text{ cfs}$ , which rounds up to 6 cfs

Out of Basin Direct Diversion Fee = 6 CFS X \$100.00/cfs X (number of applications)

**For storage water rights:** each acre-foot (af) or fractional af, rounded up to the next whole af of storage to be transferred shall be assessed the following fees:

from 0 to 1,000 afa	_____ afa	@ \$0.10 each
over 1,000 to 5,000 afa	_____ afa	@ \$0.12 each
over 5,000 to 100,000 afa	_____ afa	@ \$0.15 each
over 100,000 afa	_____ afa	@ \$0.20 each

**Example:** If the amount of the water right is 100 acre-feet (af) of storage; and, the amount to be transferred will be 50 af of storage;

The fee is based on: 50 af

Out of Basin Storage Fee = 50 af X \$0.10/af X (number of applications)

## ATTACHMENT TO PETITION

Page 1. *Point of Diversion or Rediversion.*

The transferor's and transferee's points of diversion are generally located on attached Maps.

Transferor's points of diversion include five (5) locations in T1S R5E and T2S R6E MDB&M and are designated on Map 2.

Transferee's point of diversion is N 2500' and E 1050' from SW corner of Sec 16 T1S R6E MDB&M.

1b. The transferor holds the water right and provides irrigation water to Stewart Tract. This tract has been farmed for over 100 years. Pursuant to the proposed transfer, the transferor commits to decrease its acreage being farmed and thus its diversions onto Stewart Tract by at least the same amount as will be used by the transferees. Hence, there will be no net increase in consumptive use of water.

2a. This question appears to deal with a Petitioner changing its own point of diversion, not a change in diversion resulting from a transfer to another party. 2b. Answers the latter.

2b. There are approximately 15 diversions between the transferor's and the transferee's. All of those diversions are by local agricultural interests who practice the same farming activities each year. The transfer water will not have any effect on those diverters needs, and therefore there is no reason to expect they might divert any of the transfer water. The diverters between the transferor and transferee always have water in the channels regardless of San Joaquin River inflow or other local diversions. This is due to the fact that the channels in the area are below sea level, and always contain water. In the last two years, significant acreage on the east side of the San Joaquin River has been converted from farmland to housing and other development. That housing and other uses do not rely on diversions from the River, but are being included as potential diverters between the transferor and transferee.

2c. This list includes both the known diverters and those property owners along the San Joaquin who could be potentially affected.

River Ranch Investments Properties  
James Sarale  
2762 North Tracy Blvd.  
Tracy, CA 95376

Robert Costa, Sr.  
1430 Lincoln Blvd.  
Tracy, CA 95376

Arnold Strecker, Jr., and Ann  
1267 Undine Road  
Stockton, CA 95206

Mr. Jerry Robinson  
8601 South Inland Drive  
Stockton, CA 95206

Lynn A. Miller  
1277 W. Undine Road  
Stockton, CA 95206

Bernard Demele, et al.  
13601 Skyline Blvd.  
Oakland, CA 94619

J & D Brass COTRS, et al.  
Jesslyn Farros  
1649 W. Harney Lane  
Lodi, CA 95242

Jacquelin Cordes, et al.  
1677 Parkview  
Chico, CA 95926

Catherine A. Luckey  
1481 Manila Road  
Lathrop, CA 95330

Roseville Investments LLC  
Richland Communities Inc.  
2220 Douglas Blvd., Suite 290  
Roseville, CA 95661

Yvonne B. Lawrence Trust  
Attn.: Madelon A. Lawrence  
P. O. Box 25074  
Scottsdale, AZ 85255

Jimmy Robinson Tr.  
25-5572 Kona Bay Estate  
Kailua - Kona, HI 96740

Kristin McFall  
1400 Frewert Road  
Lathrop, CA 95330

Malahat and Michelle Amin  
7707 Hillview Court  
Tracy, CA 95304

Abdul and Michelle Amin  
7707 Hillview Court  
Tracy, CA 95304

Kenneth Grover  
3886 Ross Road  
Palo Alto, CA 94303

Alice Widmer Trust  
Alice J. Widmer  
12375 Droge Road  
Escalon, CA 95320

Genoveva T. Leal Trust  
1066 Douglas Drive  
San Leandro, CA 94577

S. & F. Aurelio  
P. O. Box 834  
Lathrop, CA 95330

S. J. Co. Parks and Recreation  
212 N. San Joaquin Street, Suite A  
Stockton, CA 95202

Richland Ristrim LLC  
2220 Douglas Blvd., #290  
Roseville, CA 95661

Carroll and Maria Stanley  
Moosa Luwart  
3303 Morningside Drive  
Stockton, CA 95219

ROI Lathrop Investors LLC  
2220 Douglas Blvd., Suite 290  
Roseville, CA 95661

SCL Lathrop Investors LLC  
2220 Douglas Blvd., Suite 290  
Roseville, CA 95661



City of Lathrop  
390 Towne Centre Drive  
Lathrop, CA 95330

Parkview Thousand Oaks LLC  
2220 Douglas Blvd., Suite 290  
Roseville, CA 95661

J. W. and B. O. Silveria Trust  
499 Embarcadero  
Oakland, CA 94606

Reclamation District 17  
1812 Burnside Way  
Stockton, CA 95207

3a. Per the analysis set forth in 4 and 5a. the transferor can divert off the San Joaquin River in two locations within two miles of the Head of Old River and off of Old River at three (3) locations within two and one half miles, downstream of the Head. By irrigating less land on Stewart Tract, the transferor will decrease the amount it diverts from the channels in an amount equal to or greater than the amount diverted by the transferees. The water will be diverted for agricultural uses with or without the transfer. The crops and practices of the parties are virtually the same (see attached communications with Regional Board), which means that similar amounts of return flows will be discharged back to the channels in the South Delta during times when the agricultural tidal barriers are in place and operating. This means that there will be no change in the amount of water in the South Delta available for diversion by other users. Given the amounts involved and the interconnectedness of the channels, there will be no appreciable change in flows in the channels.

3b. See 3a. above. Since the transferor has the right to divert all of the water needed to fully irrigate Stewart Tract, by decreasing its irrigation by the amount of the transfer, there can be no adverse effects on other water users in the area.

4. See attached communications with Regional Board staff. This year, the Regional Board staff requested additional information regarding pesticide use, drainage amounts, etc., to more completely analyze the potential effects of the transfer. The information submitted and attached hereto supports the conclusion that there is no significant effect on water quality.

5a. See attached communications with DFG staff. DFG stated they would likely approve the transfer, but would suggest a condition that it not occur until the water temperature in the channels exceeds 25° C. At that temperature, it is believed smelt would not be in the area.

5b. Although the amount is very small, the transfer results in an incremental amount of additional water in the channels between the seller and buyer. This amount provides additional habitat and dilution to the benefit of any aquatic species in that reach.

5c. See attached communications with DFG staff. The transfer involves a relatively small amount of water; the seller foregoing its diversion and the buyer diverting it a few miles downstream on the San Joaquin River. Assuming the flow in the river is between 600-1000 cfs, the transfer would result in an additional (approximately) 4-5 cfs existing in the channel between the seller and the buyer, and an additional 4-5 cfs being diverted at the buyers diversion site. The location of the parties' intakes is along the San Joaquin River roughly between Mossdale Landing and Brandt Bridge. It is unknown what the rate of exports will be by DWR and USBR during this time, but it should be between 4000 and 8000 cfs. This makes the transfer rate approximately at most .00125 of the amount being exported from the Delta by the projects.

Although this area certainly contains fish, it is not the normal habitat area for smelt or other species of concern. Neither seller nor buyer is aware of any data which indicates smelt were ever present in the mainstem of the San Joaquin in this location. The channel is a corridor for migrating salmon (both out and in). However, the time of year of the transfer does not correspond to the time when smelt may be present in the southern Delta and is not a time when salmon smolts are out-migrating or adults returning to spawn. Hence there is virtually no risk to these species of concern.

Given the amounts of the transfer and the rate of diversion, the shift of place of diversion under the transfer could only have an effect if there were some significantly higher density population of some fish at the buyers' intake than exists at the sellers' intakes. No known facts support such a scenario. Consequently, there is no basis to conclude or even speculate that the transfer will have any adverse effect on any species of fish.

5d. See 5c. above.

### ISSUE OF AVAILABILITY OF WATER

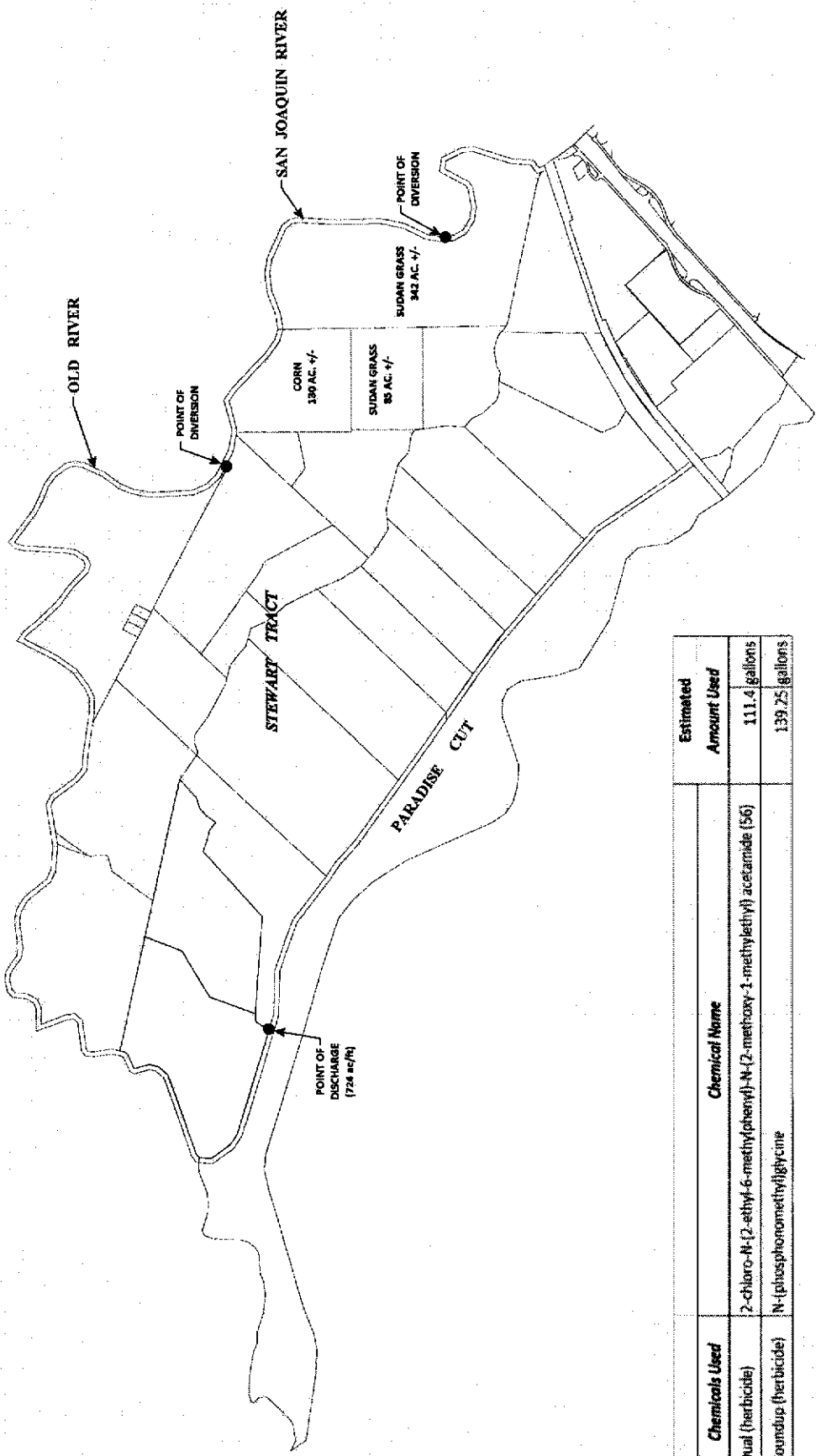
A proposed transfer last year raised concerns with the Chief of the Division of Water Rights regarding whether or not there actually was water to transfer. A number of communications attempted to address this issue. The parties hereto submit two things relating to this concern. First, there is water available for transfer. As previously stated, the channels of the Delta, including the San Joaquin River between Mossdale Landing and Brandt Bridge always contain water. This is due to the elevation of the channel bottom in relation to sea level. Water is always present, even at low tides meaning that there is always water available to divert under an existing water right (which does not have any other relevant limitation). DWR has confused this issue in the past with presentations to the Board showing particle tracking results. These results purportedly showing how Sacramento River water does or does not end up in particular places in the southern Delta under different export scenarios.

However, that particle tracking does not explain how the water in the channels came to be, it only follows test run particles in the modeling. Since the channels do in fact contain water, the particle tracking does not answer the questions of how or what water is in those channels. It does not matter what the immediate source of the water is at any particular moment in any particular Delta channel; what is legally and hydraulically relevant is that there is water. In addition the

DWR modeling misses the point about what is the actual supply of the water in those channels their tracked particles did not enter. Whether or not Sacramento River water arrives at any particular point at any particular time, adding a supply to the Delta from any point offsets a withdrawal from some different point (other effects being constant). Hence the inflow of the San Joaquin River is not the determining factor as to whether water is present or available under an in-Delta water right.

The second point is that allegations about whether or not someone (like the seller) is able to divert under its rights is not a basis for disallowing a transfer. If any party or the Division believes someone is diverting in contravention of its permit/license, a complaint should be filed and the parties allowed to present evidence in support of their positions. There is no basis for accepting allegations and speculation as a basis to deny a transfer.



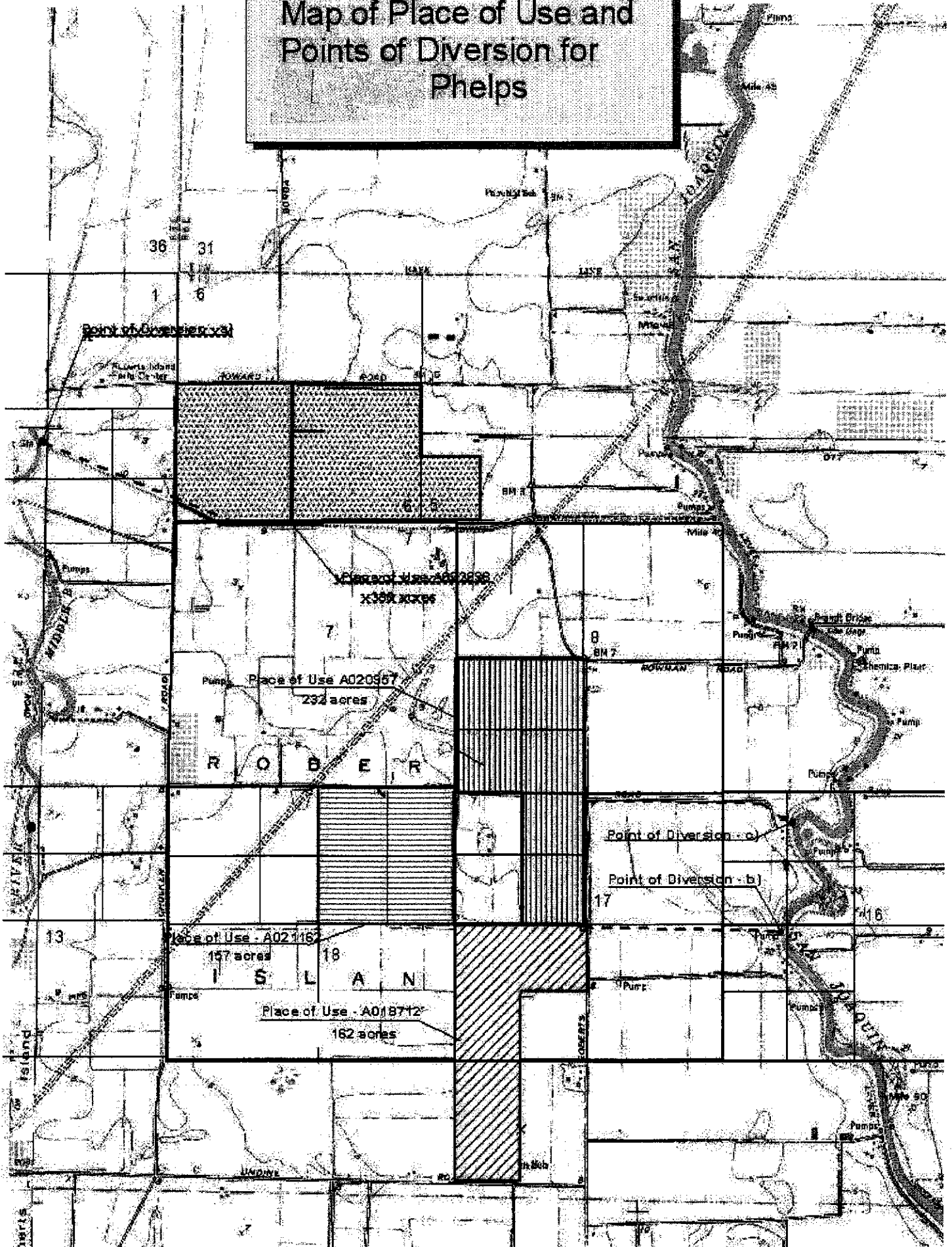


Chemicals Used	Chemical Name	Estimated Amount Used
Dual (herbicide)	2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl) acetamide (56)	111.4 gallons
Roundup (herbicide)	N-(phosphonomethyl)glycine	139.25 gallons

2008 CALIFIA, LLC WATER TRANSFER  
 JUNE 2008



# Map of Place of Use and Points of Diversion for Phelps



**CONSULTATION WITH REGIONAL BOARD**

Subj: **Consultation for Water Transfer**  
Date: 3/31/2008  
To: [kbriggs@waterboards.ca.gov](mailto:kbriggs@waterboards.ca.gov)

Dear Ms. Briggs:

In order to submit a Petition for a Temporary Change to a Water Right Permit/License to authorize a transfer of water, the parties must consult with the Regional Board. Last year I did this with Bill Croyle, but do not know who to contact now that he is no longer there. Please direct me to the appropriate person.

The transfer involves approximately 900 acre feet over three months, with diversion rates at 1-3 cfs. An upstream diverter (on Stewart Tract) proposes to decrease diversions by a specific amount so that two downstream diverters (on Upper Roberts Island) can divert this amount. The upstream diverter currently diverts from the mainstem of the San Joaquin and Old River, and the buyers divert from farther downstream on the mainstem and from Middle River. Per last year's review, my analysis indicated no potential effect on water quality, and I believe Mr. Croyle agreed. The reason was that regardless of who diverts the water, the same types of crops are grown and the same drainage is produced.

The required consultation also include DFG, who I have recently contacted and begun a discussion. Once I know who at the Regional Board I should talk to, I will provide more specifics. Thanks, JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherrlaw



Subj: **In-Delta Transfer**  
Date: 3/26/2008  
To: [wcroyle@waterboards.ca.gov](mailto:wcroyle@waterboards.ca.gov)

Dear Bill:

Last year you were the contact person for consulting with the Regional Board staff regarding a proposed transfer from one in-Delta users to two others. Do you know who I should contact for this year's proposed transfer?

How's the new job? JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherlaw

Mr. Chris Jimmerson

April 11, 2008

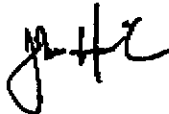
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My conclusion for this transfer is the same as it was for last year. The proposed transfer will have no measurable effect on local water quality. It will also have no effect on other Delta quality, nor export water quality. If the transfer is denied, there will be the same amount of diversions, and the same amount and same quality of drainage reaching the channels.

Please review these materials at your earliest convenience so that I may file the necessary petition with the SWRCB to get the transfer approved. I expect to forward you my analysis being provided to DFG within one working day. Thank you for your consideration and please feel free to contact me if you have any questions. I ask that you conclude the proposed transfer will have no significant effect on local water quality.

Please call me if you have any questions or comments.

Very truly yours,



JOHN HERRICK

JH/dd

Mr. Chris Jimmerson  
April 11, 2008  
Page - 2 -

operating at a combined rate of between 8000 cfs to 12,000 cfs. That yields 16,000 to 24,000 acre feet *per day* compared to the 1,350 acre feet of the transfer over (approximately) four months.

Under typical summer conditions, the San Joaquin River flow splits at the Head of Old River, with some going down Old River and some staying in the mainstem. Old River then splits again a mile downstream with the northern channel being the head of Middle River. Because of the temporary barriers installed each spring and operated during summer and fall, and the effects of the export pumps, flows in the channels are not as they were under "natural conditions."

In summer, the San Joaquin flow in the mainstem is sometimes not enough to have a net flow all the way to the Deep Water Ship Channel, and is never enough to exit out the Bay. The flow in Old River also never reaches the Bay, as all of it is used by local diverters and/or all goes to the export pumps and is exported. Middle River ends up having flow enter it from both ends, somewhere in the middle there being a null zone. This year, as was done last year, we expect to have the flap gates on the Tracy Old River barrier operated to induce net flow out (downstream) Old River. This could affect Middle River flows (causing the net flow to be upstream, or back into Old River), however, even with these net flows, all of the water not used by the local diversions still goes to the export pumps and none of it reaches the Bay.

The transfer seeks to have the seller decrease its diversions in an amount equal to the needs of the buyers. Hence there will be no net change in the diversions in the area. This is a requirement for any approval by the SWRCB Division of Water Rights.

Both the Seller and the Buyers farm the same crops. Typically this includes some mix of alfalfa, wheat, corn, or tomatoes. The soils are very similar, as are the farming practices. This means that there is virtually no difference between the Seller's farming and the Buyers' farming. The result therefore is that each would divert water when necessary for irrigation which would result in some drainage eventually pumped back into the channels. There is nothing to suggest that the drainage of the Seller is in any way different that the drainage of the Buyers. Even if the concentrations of salts in the drainage were different, there would still be no net effect on the water quality in the Southern Delta because the concentrations would soon reach equilibrium; that is to say the parties are not adding salts to the water, rather they are simply concentrating that which is already in the source water. Under the transfer, there is not net change in the consumptive use of the water.

With regard to any chemicals used, again, there is no difference in what the parties use. All are members of the local Ag Coalition which has sampling sites in the South Delta at drains which also serve the same crops.

# **SOUTH DELTA WATER AGENCY**

4255 PACIFIC AVENUE, SUITE 2  
STOCKTON, CALIFORNIA 95207  
TELEPHONE (209) 956-0150  
FAX (209) 956-0154  
E-MAIL Jherrlaw@aol.com

**Directors:**

Jerry Robinson, Chairman  
Robert K. Ferguson, Vice-Chairman  
Natalino Bacchetti  
Jack Alvarez

**Engineer:**

Alex Hildebrand  
Counsel & Manager:  
John Herrick

April 11, 2008

Mr. Chris Jimmerson  
Environmental Scientist  
Irrigated Lands Regulatory Program  
Central Valley Water Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670

Re: Consultation for Proposed Temporary License Change for Transfer of Water

Dear Chris:

Per our conversation earlier this week, below are the relevant facts regarding the proposed water transfers. I have attached maps which will assist in your review. Also attached are the correspondence from last year's consultation with Bill Croyle.

The Seller is RD 2062, which encompasses (approximately) the northern 2/3 of Stewart Tract. The District/Tract is bounded by the mainstem of the San Joaquin River on the north west side, Old River on the north side, and Paradise Cut on the south west side. The District has a number of water right licenses, the largest of which is Application #5155 or License #2637 with a priority date of 8-13-26. The license allows diversions at the rate of 49.24 cfs at various places along The San Joaquin and Old Rivers for use on just under 4,000 acres.

The Buyers are located on Upper Roberts Island which is north, or downstream of Stewart Tract. One diverts from the San Joaquin River and the other diverts from Middle River. The mainstem diverter's licenses allow him to divert 1.43 cfs and 3.16 cfs (or 4.59 cfs), while the Middle River diverter rate is just under 2.5 cfs. [Up until recently, the Middle River diverter's license included his neighbor also. However, during the legal actions surrounding Term 91, the license was split so that they were each given a "new" license. The "old" license allowed a diversion rate of 3.9 cfs, and so after the split, the proposed Buyer is now allowed to divert just under 2.5 cfs.] The mainstem diverter seeks to purchase just under 1000 acre feet over the summer and early fall and the Middle River diverter seeks to purchase just under 350 acre feet during the same time. To put this in perspective, during this same time the export pumps will be



Linda S. Adams  
Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold  
Schwarzenegger  
Governor

Sacramento Main Office  
11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114  
Phone (916) 464-3291 • FAX (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>

2 May 2008

RECEIVED  
MAY 06 2008

Mr. John Herrick, Esq.  
South Delta Water Agency  
4225 Pacific Ave., Suite 2  
Stockton, CA 95207

## CONSULTATION FOR PROPOSED TEMPORARY LICENSE CHANGE FOR TRANSFER OF WATER

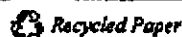
In a letter dated 11 April 2008, you requested that the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) staff consult with you on your proposed water transfer. The State Water Resources Control Board, Division of Water Rights requires that the South Delta Water Agency (SDWA) consult with the Regional Water Board and other agencies before it will review the Petition for Temporary Change of Place of Diversion.

At this time, we do not have sufficient information to conclude whether or not the proposed water transfer will have a significant effect on water quality. Some of the statements require additional documentation in order for us to support the conclusion you have reached. The general rationale you provide is that there is not any net increase in water diversions in the proposed transfer, and that the crops, pesticide use, management practices, discharges, fertilizer, and Coalition membership status are similar in both the seller and the buyer properties. Although these may be similar, staff needs more definitive information to make a clear conclusion regarding potential impacts to water quality.

Please provide the following information:

1. Names of the buyers and the assessor parcel numbers of the land to which the water will be applied. This information is needed to confirm the buyers' coalition membership status.
2. Locations of the buyers' and sellers' discharge points and the estimated amount of discharge (in acre-feet). This information is needed to determine if the same water body will be receiving a potential discharge of waste or whether a different water body would be potentially affected by the transfer.
3. Active ingredients of pesticides used by the buyer and seller and estimated pounds of use (can be estimated based on previous year's use). This information is needed to determine whether an increase in the discharge from the buyer could contain waste affecting the quality of the receiving water. Water quality problems associated with pesticides have been identified in a number of Delta waterways.

California Environmental Protection Agency



4. Identification of the buyers and sellers cropping patterns (crop type / acreage) with and without the transfer. This information is needed to confirm the similarity of crops grown.
5. Irrigation methods used by the buyers and sellers. This information is needed to confirm the similarity of irrigation management practices being used.

Should you have any questions, you may direct correspondence or inquiries to Chris Jimmerson at (916) 464-4859 or [cjimmerson@waterboards.ca.gov](mailto:cjimmerson@waterboards.ca.gov).



JOE KARKOSKI, Chief  
Irrigated Lands Regulatory Program

cc: Chris Jimmerson, Central Valley Regional Water Board

*Rec'd  
4/21 9:525*

Subj: **Consultation for Water Transfer**  
Date: 5/2/2008  
To: [CJimmerson@waterboards.ca.gov](mailto:CJimmerson@waterboards.ca.gov)

Dear Chris:

I have not heard back from you regarding my recent request for consultation with the Regional Board for a proposed water transfer. Please let me know if you have been able to review the information I provided and when I might expect a response; or if there is some other problem. Thanks, JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherrlaw

Subj: **Re: Consultation for Water Transfer**  
Date: 5/5/2008  
To: [CJimmerson@waterboards.ca.gov](mailto:CJimmerson@waterboards.ca.gov)

Thanks for the heads up. Pending the official response I will try to gather the extra information. I am confident that no other transfer for the last 50 years has been required to do this sort of investigation and disclosure of information as I have reviewed and commented on quite a number myself. I assume that next time someone down the valley receives EWA or other transfer water you will go through this same burdensome investigative process.

I won't forward this on to anyone else up the chain until the official letter is sent to me, but you can express my deep disappointment that the regulators remained focused on the minutest part of the problem while upstream polluters go unchecked, water quality standards go unmet and the fisheries wink out of existence. Heaven forbid we should help someone who diverts 1 cfs.

I'm restraining myself from using more descriptive adjectives. JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154



Subj: **Proposed transfer**  
Date: 5/30/2008  
To: [CJimmerson@waterboards.ca.gov](mailto:CJimmerson@waterboards.ca.gov)  
CC: [jkarkoski@waterboards.ca.gov](mailto:jkarkoski@waterboards.ca.gov)

Dear Chris:

Enclosed is the information requested by you regarding acreage, pesticide use, drainage, etc for the two buyers/transferees. I expect to have the sellor's information asap. Please let me know if this is sufficient or if further clarification is necessary.

One of the attached doc was produced by the Phelps brothers who farm their own ground. The other are my notes from talking to the tenant (Goldern R Inc.) which is farming the ground owned by Mr. Conn. JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherrlaw

Subj: **Re: Proposed Transfer**  
Date: 5/30/2008 4:01:18 P.M. Pacific Daylight Time  
From: [CJimmerson@waterboards.ca.gov](mailto:CJimmerson@waterboards.ca.gov)  
To: [Jherrlaw@aol.com](mailto:Jherrlaw@aol.com)  
CC: [jkarkoski@waterboards.ca.gov](mailto:jkarkoski@waterboards.ca.gov)

John,

When you gather the sellers information could you also provide some additional information that I was not able to glean out of your documentation.

What irrigation methods are the buyers and sellers using? Furrow, flood,  
What is the sellers discharge point? San Joaquin River, Old River, Middle River  
What crops did the seller have?  
Thank you

Chris Jimmerson  
Environmental Scientist  
Irrigated Lands Regulatory Program  
Central Valley Water Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670  
Phone 916-464-4859  
Fax 916-464-4780  
[cjimmerson@waterboards.ca.gov](mailto:cjimmerson@waterboards.ca.gov)

>>> <[Jherrlaw@aol.com](mailto:Jherrlaw@aol.com)> 5/30/2008 9:55 AM >>>

Oops, forgot attachments

Dear Chris:

Enclosed is the information requested by you regarding acreage, pesticide use, drainage, etc for the two buyers/transferees. I expect to have the seller's information asap. Please let me know if this is sufficient or if further clarification is necessary.

One of the attached doc was produced by the Phelps brothers who farm their own ground. The other are my notes from talking to the tenant (Goldern R Inc.) which is farming the ground owned by Mr. Conn. JOHN

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\*\*\*\*\*Get trade secrets for amazing burgers. Watch "Cooking with Tyler Florence" on AOL Food.  
(<http://food.aol.com/tyler-florence?video=4&?NCID=aolfod00030000000002>)

Monday, June 23, 2008 AOL: Jherrlaw

Subj: **Water Transfer Information**  
Date: 6/20/2008  
To: [CJimmerson@waterboards.ca.gov](mailto:CJimmerson@waterboards.ca.gov)  
CC: [jkarkoski@waterboards.ca.gov](mailto:jkarkoski@waterboards.ca.gov), [sdelloso@Cambaygroup.com](mailto:sdelloso@Cambaygroup.com), [Jzolezzi@herumcrabtree.com](mailto:Jzolezzi@herumcrabtree.com),  
[ggebhardt@Cambaygroup.com](mailto:ggebhardt@Cambaygroup.com), [RBatista@Cambaygroup.com](mailto:RBatista@Cambaygroup.com)

Dear Chris:

I am forwarding the information provided by the seller in response to your request for additional facts regarding the proposed transfer. Since there has been substantial delay this year, the sepcific time frames/use of the water may be slightly different in the Petitions than was provided to you. I expect to have the final docs ready and submitted to the SWRCB early next week and will provide you a copy at the same time.

If you have any questions or need more information we will get it, and of course if you have any comments or suggested limitations for the transfers, you can make them through me or directly through the SWRCB process. Thanks, JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherrlaw

**CONSULTATION WITH DFG**

Subj: **Proposed 2008 in-Delta Transfer**  
Date: 3/26/2008  
To: [jwhite@dfg.ca.gov](mailto:jwhite@dfg.ca.gov), [carmor@dfg.ca.gov](mailto:carmor@dfg.ca.gov)  
CC: [sdelloso@CambayGroup.com](mailto:sdelloso@CambayGroup.com), [ggebhardt@CambayGroup.com](mailto:ggebhardt@CambayGroup.com)

Gentlemen:

You may recall our correspondance last April wherein I sought consultation from DFG regarding a proposed transfer from a diverter on Stewart Tract to two diverters on Upper Roberts Island. These same parties will again be seeking such a transfer, and therefore I need to begin the consultation process with you once more.

Attached hereto are our previous communications. The facts this year should be virtually the same as those contained in these e-mail. Please review at your convenience and let me know if you need additional information. I expect that within the next few weeks I will prepare a "final" description of the transfer for you to review again before you give your final okay (hopefully).

Thank you for your consideration, and feel free to contact me if you have any questions.

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherrlaw

Subj: **Consultationnfor Water Transfer**  
Date: 5/2/2008  
To: [jwhite@dfg.ca.gov](mailto:jwhite@dfg.ca.gov), [camor@dfg.ca.gov](mailto:camor@dfg.ca.gov)

Gentlemen:

I have not heard back from you regarding my recent request for consultation with DFG for a proposed water transfer. Please let me know if you have been able to review the information I provided and when I might expect a response; or if there is some other problem. Thanks, JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherrlaw

Subj: **Re: license change for transfer of water**  
Date: 5/16/2008  
To: [GMartinelli@dfg.ca.gov](mailto:GMartinelli@dfg.ca.gov)

The statutes controlling temporary permit changes require the Petitioner to consult with the Regional Board regarding water quality impacts and DFG regarding impacts to fisheries. In the past, DFG has responded to me with a conclusion such as "the proposed transfer does not appear to present any significant threat or impact to fisheries." Once I get the responses from Regional Board staff and DFG staff, I then forward the complete Petition to Division of Water Rights in SWRCB and they notice the proposed change. Last year Mr. Armour and Mr. White gave me such a response which I can forward you if necessary.

I don't believe SWRCB will process the Petition unless DFG has commented/responded to the request for consultation. JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

Monday, June 23, 2008 AOL: Jherlaw

5-16-08

Mr. Herrick,

I am currently evaluating the project that you outlined in the April 18, 2008 letter to Jim White and Charles Armor to transfer water from RD 2062 located on Stewart Tract to buyers on Upper Roberts Island. I am not sure what type of response you are seeking from the Department. Typically, we just comment on the notice to transfer water from the State Board. Since your letter indicates that the State Board should notice the transfer in the near future, that may be the appropriate place to comment if we have any. Please contact me if you have any questions or would like to speak further about the project.

Greg

Greg Martinelli  
Water Conservation Supervisor  
Department of Fish & Game  
Bay Delta Region  
Post Office Box 47  
Yountville, California 94599

(707) 944-5570 voice

(707) 944-5595 fax



Subj: **Re: license change for transfer of water**  
Date: 6/18/2008 1:57:29 P.M. Pacific Daylight Time  
From: [GMartinelli@dfg.ca.gov](mailto:GMartinelli@dfg.ca.gov)  
To: [Jherrlaw@aol.com](mailto:Jherrlaw@aol.com)

John,

Based on the information that we have, we would likely approve the transfer request. We would likely add a condition that the diversion not take place until the water temperature was greater than 25 deg C to protect smelt. We would also like to know what land use changes are going to occur to ensure that the additional water will not be needed by the seller. Is the seller going to fallow land? If so, how much? These minor issues should be resolved through the State Board process so I think this is approval enough to move forward with getting State Board approval. If you have any further questions or comments, please feel free to contact me.

Greg

Greg Martinelli  
Water Conservation Supervisor  
Department of Fish & Game  
Bay Delta Region  
Post Office Box 47  
Yountville, California 94599

(707) 944-5570 voice  
(707) 944-5595 fax

>>> <[Jherrlaw@aol.com](mailto:Jherrlaw@aol.com)> 6/17/2008 2:30 PM >>>  
Gentlemen:

Knowing that I may still need your approval for a proposed transfer between two in-Delta users, I have to ask: why can't I get DFG's consultation/approval for my transfer, but DFG approves DWR/USBR's request to pump 500 cfs per day while water quality standards are being violated? It would seem inconsistent to "work out" the 500 cfs of additional pumping while not doing so for a shift of <10 cfs every few days.

Let me know if I should elevate this issue or just keep my mouth shut and accept the unfair application of the rules. JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154

\*\*\*\*\*Gas prices getting you down? Search AOL Autos for fuel-efficient used cars. (<http://autos.aol.com/used?ncid=aolaut00050000000007>)

Monday, June 23, 2008 AOL: Jherrlaw

Subj: **Re: license change for transfer of water**  
Date: 6/18/2008  
To: [GMartinelli@dfg.ca.gov](mailto:GMartinelli@dfg.ca.gov)

Thanks, hope my previous e-mail wasn't too surly. The answers to your questions should be in the actual Petitions. SWRCB does its own inquiry to insure that, as in this case, acreage is actually fallowed. Here, the seller will fallow an amount of land that would have used the same amount of water as is proposed for transfer. The seller, being a developer of the land, decided to not farm part of its land (not yet ready to be built upon) in order to supply the transfer water. However, I understand that they are farming the ground until construction begins, if for no other reason than to maintain continuous use of their licensed supply. Besides, with farm prices up, the farming is a good source of income.

Anyway, I digress. I will be submitting the Petitions soon, and will include this and other e-mail between us. DFG can make further comments when it is noticed. Thanks, JOHN

JOHN HERRICK  
4255 Pacific Avenue Suite 2  
Stockton, California 95207  
Tel: 209 956-0150  
Fax: 209 956-0154