

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>

STATE WATER RESOURCES
CONTROL BOARD
08 DEC 31 PM 3:52
DIV. OF WATER RIGHTS
SACRAMENTO

PETITION FOR TEMPORARY URGENCY CHANGE

(Water Code 1435)

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

Application # 2948 Permit # 1412 License # 1405 Statement or Other _____

I (we) Delta Farms RD 756 hereby petition for a temporary urgency
(Water Right Holders Name)
change(s) noted above and shown on the accompanying map and described as follows:

Point of Diversion or Rediversion (Give coordinate distances from section corner or California
Coordinates, and the 40-acre subdivision in which the present and proposed points lie.)

Present See Attachment 1
Proposed See Attachment 1

Place of Use (If irrigation, then state number of acres to be irrigated within each 40-acre tract.)

Present See Attachment 1
Proposed See Attachment 1

Purpose of Use

Present See Attachment 1
Proposed See Attachment 1

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)

The temporary urgency change(s) is to be effective from May 1 to November 1
(Cannot exceed 180 days)

Will this temporary urgency change be made without injury to any lawful user of
water? YES (yes/no)

Will this temporary urgency change be made without unreasonable effect upon fish, wildlife, and
other instream beneficial uses? YES (yes/no)

State the "Urgent Need" (Water Code 1435(c)) that is the basis of this temporary urgency change
petition (attach additional information as necessary):

See Attachment

If the point of diversion or redirection is being changed, is any person(s) taking water from the stream between the old point of diversion or redirection and the proposed point?

YES (yes/no)

Are there any persons taking water from the stream between the old point of return flow and the new point of return flow? YES (yes/no)

If yes, give name and address, as well as any other person(s) known to you who may be affected by the proposed change. **See Attachment 1.**

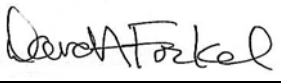
I (we) consulted the California Department of Fish and Game concerning this proposed temporary change. YES (yes/no)

If yes, state the name and phone number of the person contacted and the opinion concerning the potential effects of your proposed temporary urgency change on fish and wildlife and state the measures required for mitigation. **See Attachment 1.**

THIS TEMPORARY URGENCY CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE. THIS TEMPORARY URGENCY CHANGE IS REQUESTED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS OR LESS.

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

Dated December 31, 2008 at Sacramento, California

Signature(s) 

Telephone No. **(925) 932-0151**

(Address) **1600 Olympic Blvd., Suite 350, Walnut Creek, CA 94596**

NOTE: All petitions must be accompanied by the **filing fee**, (see fee schedule at www.waterrights.ca.gov) made payable to the State Water Resources Control Board and an **\$850 fee** made payable to the Department of Fish and Game must accompany this petition. Separate petitions are required for each water right.

Attachment 1
Responses to Petition Form

Overview of Proposed Transfer

Delta Wetlands Properties (Delta Wetlands) proposes a temporary water transfer program, whereby 4,189 acres on Webb Tract in the Sacramento River – San Joaquin River Delta would be fallowed, and up to 7,540 AF of water not applied by Delta Wetlands on the land would be transferred to the Metropolitan Water District of Southern California (MWD). The forborne water would be available for transfer during the period from May through September. The water will be conveyed through the SWP or CVP Pumping Plants on a space-available basis. This petition proposes changes to License 1572 (Webb Tract) only. Proposed changes to License 1405 (Bouldin Island) are described in a separate petition filed contemporaneously with this petition.

Overview of License No. 1572

Delta Wetlands irrigates Webb Tract using water right License 1572 (A002952) issued to Delta Farms Reclamation District No. 2026. License 1572 has a 1922 priority date. Water has been diverted under this license for over 80 years to irrigate a variety of crops. License No. 1572 authorizes the maximum direct diversion of 63.94 cfs (33,352 afa) between March 1 and November 1 for irrigation of 5,115.5 acres on Webb Tract. The sources of water for License 1572 are False River, Fisherman's Cut, Washington Slough, Old River and San Joaquin River. Delta Wetlands is the authorized agent for Delta Farms Reclamation District No. 2026 with respect to this petition.

Nature of the Urgent Need that is the Basis of this Petition

California is facing the most significant water crisis in its history. After experiencing two years of drought and the driest spring in recorded history, storage in California's major reservoirs is low. Lake Oroville, the principal storage reservoir for the SWP, is at 28 percent of capacity, and 44 percent of average storage for this time of year.

With the Sacramento-San Joaquin Delta ecosystem near collapse, court-ordered restrictions on water deliveries from the Delta have reduced supplies from the state's two largest water systems by twenty to thirty percent.

In December 2007, Judge Oliver Wanger restricted pumping to protect the Delta smelt, resulting in a 25 percent reduction in water deliveries. In a November 2008 decision, the California Fish and Game Commission implemented take restrictions for the longfin smelt which also could reduce water delivery pumping. In December 2008, the U.S. Fish and Wildlife Service released a Delta smelt Biological Opinion which could reduce Delta exports by as much as 50 percent. And a Biological Opinion from the National Marine Fisheries Service to protect salmon and steelhead is expected in March. These regulatory actions have and will continue to significantly decrease deliveries to homes, farms, cities and industry by both the State Water Project and the federal Central Valley Project.

TRANS-TEMP-PET (11-00) If your answers require more space than provided, please attach additional pages

Continuing dry conditions and court-ordered restrictions on Delta water exports are limiting water deliveries to farms and urban areas. DWR's early estimate is that it will only be able to deliver 15 percent of requested State Water Project water this year to the Bay Area, San Joaquin Valley, Central Coast and Southern California.

In June 2008, the Governor issued Executive Order S-06-08 declaring a statewide drought, which directed his state agencies and departments to take immediate action to address the serious drought conditions and water delivery reductions that exist in California and directing the facilitation of water transfers.

In light of the dire state of California's water supply, and in the spirit of promoting the goals of EO S-06-08, Delta Wetlands is offering to forebear water use on Webb Tract in order to make water available to MWD. In order for this transfer to be feasible, however, the requested temporary transfer must be approved by the SWRCB no later than February 2009. This date is dictated by the cultural requirements of the farmers who must prepare the land, order seeds, and hire workers and equipment by that date if they are to farm Webb Tract in 2009.

Water Code Section 1435 (c) requires the State Water Resources Control Board (SWRCB) to find that Delta Wetlands has an urgent need to make the proposed temporary urgency change. The SWRCB may find an "urgent need" if circumstances exist to conclude that the temporary urgency change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented, unless the petitioner has not exercised due diligence in pursuing the requested water right changes.

This petition for temporary urgency change meets the requirement for "urgent need" under Water Code section 1435 (b)(1). The proposed temporary urgency change is necessary to provide much needed water supply to Southern California and to help supplement the SWP and CVPs now limited ability to continue to provide its service areas within the state with a continued water supply.

Point of Diversion or Rediversion

Present:

Point of Diversion	Source	Diversion Reference Points	California Coordinate Zone 3 (or as otherwise noted)	Point is within (40 acre subd.)	Project Section	Township	Range	Base & Meridian
One point of diversion (one siphon) between Point A and Point B	Old River	Point A (Old River and San Joaquin River)	N 574,750 E 1,691,450	NW ¼ SE ¼	30	3N	4E	MD
		Point B (False River)	N 571,100 E 1,688,350	SW ¼ NW ¼	31	3N	4E	MD
Two points of diversion (six siphons) between Point B and Point C	False River	Point B (above)						
		Point C (Fisherman's Cut)	N 569,050 E 1,669,950	SW ¼ SE ¼	33	3N	3E	MD
Four points of diversion (eleven siphons) between Point D and Point A	San Joaquin River	Point D (San Joaquin River)	N 578,850 E 1,670,550	NW ¼ NE ¼	28	3N	3E	MD
		Point A (above)						

TRANS-TEMP-PET (11-00) If your answers require more space than provided, please attach additional pages

Proposed:

Point of Diversion	California Coordinate Zone 3 (or as otherwise noted)	Point is within (40 acre subd.)	Project Section	Township	Range	Base & Meridian
State Water Project Banks Pumping Plant	N 486,035 E 1,695,057	NW ¼ of SE ¼	20	1S	4E	MD
Central Valley Project Jones (Tracy) Pumping Plant	S 76 degrees 39 minutes E, 2674.53 feet from West ¼ Corner of Section 29 T 1 South R 4 East, M D B & M	NE ¼ of SW ¼	29	1S	4E	MD

TRANS-TEMP-PET (11-00) If your answers require more space than provided, please attach additional pages

Place of Use

Present:

Webb Tract, Contra Costa County

Proposed:

MWD Service Area as described in maps attached to Application 031431 (Application to Appropriate Water on the New River in Southern California) and Application 030661 (Application to Appropriate Water of the Alamo River).

Purpose of Use

Present:

Irrigation

Proposed:

Irrigation, domestic, power generation, municipal, and industrial.

Preservation or Enhancement of Wetlands Habitat, Fish and Wildlife Resources

Open water habitat, riparian woodland and scrub, and freshwater marsh areas, where most sensitive species may nest, would be unaffected by the proposed fallowing program. For species that may forage in the actively farmed areas, some would benefit from the fallowing program (e.g., raptors, such as Swainson's hawks which are unable to hunt in tall corn).

The proposed transfer may provide environmental benefits through increased flows downstream of Delta Wetlands' present point of diversion due to the reduction of in-Delta diversions. The fallowing program will also reduce agricultural drainage into the Delta from Webb Tract. Although the quantity of water proposed for transfer would be a small percentage of the total Delta inflow, the reduction of diversions and consumptive use on Webb Tract will have a positive effect on in-Delta water quality and flow. In addition, the transfer will take place within the constraints set forth in the May 22, 1995, Water Quality Control Plan for the Bay-Delta to protect fish and wildlife.

Consultation with CDFG (Corinne Gray, 707/944-5526) and RWQCB (Anne Hopkinson, 916/464-4825) has been requested.

Other Lawful Water Users

Delta Wetlands proposes to add the SWP Banks Pumping Plant and CVP Tracy Pumping Plant as points of diversion. The proposed transfer will increase the flow between Delta Wetlands' present points of diversion and the South Delta pumping facilities. The Delta water diverters between the present points of diversion and the proposed points of diversion have been identified in other transfers utilizing the South Delta pumping plants.

Delta Wetland proposes a program of crop fallowing and forbearance of diversions on Webb Tract consistent with the DWR "ETAW" methodology for determining conserved water described in the DWR

white paper, "[Introduction to Water Transfers and Crop Idling/Crop Substitution for Sacramento Valley 2009](#)". This paper addresses the concerns of DWR relative to the potential impacts water transfers may have on other legal users and the environment.

If the proposed transfer is approved, the fallowing and forbearance program on Webb Tract will result in a net reduction of consumptive use of at least 7,540 AF during 2009. This forborne water will be new water in Delta channels available for transfer that would not occur in the absence of the fallowing program. Delta Wetlands will not substantially change its cropping patterns and water use on lands not included in the transfer program thereby ensuring that the water saved on the fallowed lands results in a net water savings on its properties.

This conserved water will be made available to convey to MWD "on schedule," that is, on the same schedule that the water would have been consumptively used by the crops fallowed in accordance with the ETAW pattern established by DWR. The water will be conveyed out of the Delta to the MWD service area in accordance with regulatory requirements and available pumping capacity.

Although the quantity of water proposed for transfer would be a small percentage of the total Delta inflow, the reduction of diversions and consumptive use on Webb Tract will have a positive effect on in-Delta water quality and flow.

Because this petition proposes the transfer of water that would be consumptively used on schedule, no legal users will be injured.

Effects Upon Fish, Wildlife, and Other Instream Beneficial Uses

As noted above, habitat, flow, and water quality benefits are expected as a result of the proposed transfer.

As described below unreasonable adverse effects are not expected.

Webb Tract covers approximately 5,450 acres, including 4,189 acres of corn. Approximately 105 acres of open water habitat exists at two ponds located in the northeast quarter of the island. Most of the 106 acres of riparian woodland and scrub and 172 acres of freshwater marsh on Webb Tract surround these ponds.

Webb Tract provides limited suitable habitat for western pond turtles and giant garter snakes; high quality habitat for these species is limited to areas not subject to active agriculture, e.g., riparian and marsh areas with persistent water.

Webb Tract provides suitable habitat for: northern harriers (nesting in densely vegetated wetlands or fallow fields on the island); Swainson's hawk are present on Webb Tract (nesting in riparian woodland); and greater sandhill cranes (foraging habitat present, although Webb Tract is not considered an important greater sandhill crane area by Pogson and Lindstedt). Suitable nesting and wintering habitat for the western burrowing owls is present; however, no burrowing owls were observed during bird surveys. Loggerhead shrikes were observed on Webb Tract through the spring, summer, fall and winter during surveys. The primary loggerhead shrike habitat is on interior levees that contain utility lines or fences. Loggerhead shrikes were observed only in areas with above ground utility lines located near levees on Webb Tract, where they move up and down the levees hunting for prey. Suitable nesting

habitat for tricolored blackbirds, consisting of emergent marsh, willow scrub, riparian woodlands, and Himalayan blackberry brambles; however no nesting tricolored blackbirds were observed on Webb Tract during surveys. Tricolored blackbirds were observed foraging on Webb Tract during fall and winter surveys. Webb Tract also provides suitable nesting and foraging habitat for Cooper's hawk and white-tailed kite. It provides suitable foraging/wintering habitat for ferruginous hawk, bald eagle, American peregrine falcon, short-eared owl, and California black rail. Cooper's hawk, white-tailed kite, and American peregrine falcon were observed on Webb Tract during surveys. Many white-tailed kites were observed during the surveys on Webb Tract.

Open water habitat, riparian woodland and scrub, and freshwater marsh areas, where most of the species noted above may nest, would be unaffected by the proposed fallowing program.

Webb Tract is located in Contra Costa County, California. In 2008, 4,189 acres of corn were planted on Webb Tract. According to the most current (2007) data available from the National Agriculture Statistics Service, 145,900 acres of corn were planted in the five Delta counties (Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties)

(http://www.nass.usda.gov/Statistics_by_State/California/index.asp). Fallowing Webb Tract would reduce the acreage of corn planted in the region by less than 3 percent. Delta Wetlands is aware of only one other fallowing-transfer request proposed in the Delta, i.e., Bouldin Island, which could result in fallowing 4,295 acres of corn. More than 94% of the land in the region historically used for corn production would be unaffected by anticipated fallowing programs. Given that the vast majority of the land in the region historically used for corn production would be unaffected by anticipated fallowing programs and that the petition requests only a 1-year transfer of the consumptive use portion of the water, no unreasonable effect on fish, wildlife, and other instream beneficial uses would occur.

ENVIRONMENTAL INFORMATION FOR PETITIONS

California Environmental Protection Agency

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>

**ENVIRONMENTAL INFORMATION
FOR PETITIONS**

Petition for Change

Petition for Extension of Time

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

See Attachment No. 1.

2. COUNTY PERMITS

a. Contact your county planning or public works department and provide the following information:

Person contacted: N/A Date of contact: _____

Department: _____ Telephone: (____) _____

County Zoning Designation: _____

Are any county permits required for your project? YES NO

If YES, check appropriate box below:

- Grading permit Use permit Watercourse Obstruction permit Change of zoning
 General plan change Other (explain): _____

ENVIRONMENTAL INFORMATION FOR PETITIONS

- b. Have you obtained any of the required permits described above? YES NO
 If YES, provide a complete copy of each permit obtained.
 See Attachment No. ____.

3. STATE/FEDERAL PERMITS AND REQUIREMENTS

- a. Check any additional state or federal permits required for your project:
 Federal Energy Regulatory Commission U.S. Forest Service Bureau of Land Management
 Soil Conservation Service Dept of Water Resources (Div. of Safety of Dams) Reclamation Board
 Coastal Commission State Lands Commission Other (specify) (see chart below)
- b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.

See Attachment No. ____

- c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed or bank of any stream or lake? YES NO
 If YES, explain:

See Attachment No. ____

- d. Have you contacted the California Department of Fish and Game concerning your project? * YES NO
 If YES, name and telephone number of contact: Corinne Gray; 707-944-5526

4. ENVIRONMENTAL DOCUMENTS

- a. Has any California public agency prepared an environmental document for your project? YES NO
 If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: _____

- b. If NO, check the appropriate box and explain below, if necessary:
- The petitioner is a California public agency and will be preparing the environmental document.*
 - I expect that the SWRCB will be preparing the environmental document.**
 - I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: Metropolitan Water District of Southern California (transferee)

ENVIRONMENTAL INFORMATION FOR PETITIONS

See Attachment No. _____

* **Note:** When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

** **Note:** CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

5. WASTE/WASTEWATER

a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?

YES NO

If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

 See Attachment No. _____

b. Will a waste discharge permit be required for your project? YES NO

Person contacted: _____ Date of contact: _____

c. What method of treatment and disposal will be used? _____

See Attachment No. _____

6. ARCHEOLOGY

a. Have any archeological reports been prepared on this project? YES NO

b. Will you be preparing an archeological report to satisfy another public agency? YES NO

c. Do you know of any archeological or historic sites located within the general project area? YES NO

If YES, explain: _____

See Attachment No. ____.

7. ENVIRONMENTAL SETTING

Attach **three complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

Along the stream channel immediately downstream from the proposed point(s) of diversion.

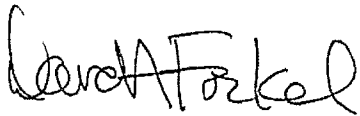
ENVIRONMENTAL INFORMATION FOR PETITIONS

- Along the stream channel immediately upstream from the proposed point(s) of diversion.
- At the place(s) where the water is to be used.

8. CERTIFICATION

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date: December 31, 2008

Signature: 

Attachment No. 1

Forbearance of Water

Delta Wetlands Properties (Delta Wetlands) proposes a temporary water transfer program, whereby up to 4,189 acres on Webb Tract in the Sacramento River – San Joaquin River Delta would be fallowed, and up to 7,540 AF of water not applied by Delta Wetlands on the land would be transferred to the Metropolitan Water District of Southern California (MWD). The forborne water would be available for transfer during the period from May through September. The water will be conveyed through the SWP or CVP Pumping Plants on a space-available basis. Any Order issued pursuant to this Petition should authorize the temporary change to be effective for up to one year. This petition proposes changes to License 1572 (Webb Tract) only.

Under the proposal, the SWP or the CVP would operate so as to deliver water made available as a result of Delta Wetland's forbearance of diversions to MWD. During balanced conditions in the Delta (as defined in the Coordinated Operations Agreement), DWR or USBR would, to the extent possible, directly divert the water forborne at Tracy or Banks Pumping Plants (assuming there is unused pumping capacity and all conditions necessary for joint point of diversion are met), or would, to the extent that operational conditions upon the Sacramento River permit, back the forborne water into upstream storage so that it can be released and diverted in the Delta at a later time when export capacity becomes available.

Delta Wetlands would make up to 7,540 acre-feet of water available for sale as a result of this proposed fallowing program on Webb Tract.

Methods of Making Water Available

Delta Wetland proposes a program of crop fallowing and forbearance of diversions on Webb Tract consistent with the DWR "ETAW" methodology for determining conserved water described in the DWR white paper, "Introduction to Water Transfers and Crop Idling/Crop Substitution for Sacramento Valley 2009". No new construction or improvements to facilities owned or operated by Delta Wetlands would be necessary for the production and forbearance of this water.

In 2008, the irrigated acreage on Webb Tract was planted in corn (4,189 acres). If the fallowing program is not approved for 2009, Webb Tract will remain planted in corn. Based upon the cropping pattern in 2008 and DWR's estimates of consumptive use for corn (i.e., 1.8 af/ac), 2009 water usage absent the water transfer is estimated to be up to 7,540 AF.

The saved water will be made available to convey to Buyer "on schedule," that is, on the same schedule that the water would have been consumptively used by the crops fallowed in accordance with the ETAW pattern established by DWR, see Table 1. Delta Wetlands will not substantially change its cropping patterns and water use on lands not included in the transfer program thereby ensuring that the water saved on the fallowed lands results in a net water savings on its properties.

ENVIRONMENTAL INFORMATION FOR PETITIONS

Sources of the Transferable Water

Delta Wetlands irrigates Webb Tract using water right License 1572 (A002952) issued to Delta Farms Reclamation District No. 2026. License 1572 has a 1922 priority date. License No. 1572 authorizes the maximum direct diversion of 63.94 cfs (33,352 afa) between March 1 and November 1 for irrigation of 5,115.5 acres on Webb Tract. The sources of water for License 1572 are False River, Fisherman's Cut, Washington Slough, Old River and San Joaquin River. Delta Wetlands is the authorized agent for Delta Farms Reclamation District No. 2026 with respect to this petition.

ENVIRONMENTAL INFORMATION FOR PETITIONS

Table 1
Consumptive Use Pattern for Transferable Water – Webb Tract

Month	CU Pattern -Corn		
	(af/ac)	(ac)	(af)
May	0.000	4,189	-
June	0.324	4,189	1,357
July	0.702	4,189	2,941
August	0.522	4,189	2,187
September	0.252	4,189	1,056
Total	1.800	4,189	7,540

CU pattern for Corn based on Bulletin 113-2 Table 22