

# ELLISON, SCHNEIDER & HARRIS L.L.P.

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February 8, 2010

Via Hand Delivery

Victoria Whitney  
Deputy Director for Water Rights, Division of Water Rights  
State Water Resources Control Board  
Post Office Box 2000  
Sacramento, CA 95812-2000

Re: Petition for Temporary Transfer of Water for License No. 1572 (A002952)

Dear Ms. Whitney:

On behalf of Delta Farms Reclamation District No. 2026 and its agent Delta Wetlands Properties, enclosed are the following:

- Petition for Temporary Transfer of Water (Water Code § 1725) for License No. 1572 and proof of service (Water Code § 1726(c)), Environmental Information Form and petition fee; and
- One \$850 check payable to the California Department of Fish and Game (Public Resource Code § 1005(e)).

Delta Wetlands Properties seeks changes to the points of diversion, purposes of use and places of use for License 1572 to authorize a temporary water transfer to the Metropolitan Water District of Southern California (MWD) pursuant to Water Code section 1725. Delta Wetlands Properties' proposed 2010 fallowing and transfer program would repeat the 2009 pilot water transfer to MWD that was conducted in cooperation with the California Department of Water Resources and approved by the SWRCB in Orders WR 2009-0003 and WR 2009-0037. Given the need to make planting decision by March 31, 2010, Delta Wetlands requests State Water Board approval of the changes before March 31, 2010.

2010 FEB - 8 PM 3:45  
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STATE WATER RESOURCES CONTROL BOARD  
SACRAMENTO, CALIFORNIA

February 8, 2010  
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We have begun and will continue to coordinate with Les Grober and Greg Wilson of your staff to process this petition. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kiel". The signature is written in a cursive style with a large initial "P".

Peter J. Kiel

Encl.

cc: Les Grober, Division of Water Rights  
Greg Wilson, Division of Water Rights  
Debra Man, Metropolitan Water District of Southern California (via email)  
Nancy Quan, California Department of Water Resources (via email)  
Erick Soderlund, California Department of Water Resources (via email)

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). 2952 Permit No. 1416 License No. 1572  
Statement or Other No. \_\_\_\_\_

**Present Holder and User of Water Right**

**Delta Farms RD 2026 (Webb Tract)** **David Forkel** **(925) 932-0151**  
Person or Company name **311 East Main Street, Suite 504** **Stockton** Contact person **CA** Telephone No. **95202**  
Address **dforkel@deltawetlands.com** City State Zip Code  
E-MAIL (For noticing purposes)

**Co-petitioner**

**Delta Wetlands Properties, agent for RD #2026** **David Forkel** **(925) 932-0151**  
Person or Company name **1660 Olympic Blvd., Suite 350** **Walnut Creek** Contact person **CA** Telephone No. **94596**  
Address **dforkel@deltawetlands.com** City State Zip Code  
E-MAIL (For noticing purposes)

**Proposed New User**

**Metropolitan Water District of Southern California** **Debra Man** **(213) 217-6000**  
Person or Company name **700 North Alameda Street** **Los Angeles** Contact person **CA** Telephone No. **90012-2944**  
Address **dman@mwdh2o.com** City State 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** 4,500 Acre-feet (AF). If the basis of right is direct diversion, average rate of diversion for the maximum 30 day period of use is 24.16 cubic feet per second (cfs).

**Period of Transfer/Exchange** (Not to exceed one year)

**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 Attachment 1.

Proposed \_\_\_\_\_

TRANS-TEMP-PET (11-00)

If your answers require more space than provided, please attach additional pages

**Place of Use**

Present See Attachment 1.

Proposed \_\_\_\_\_

**Purpose of Use**

Present See Attachment 1.

Proposed \_\_\_\_\_

	<i>Season of Use</i>	<i>Direct Use (cfs)</i>	<i>Storage (ac-ft)</i>
Present	<u>See Attachment 1.</u>	<u>See Attachment 1</u>	_____
Proposed	_____	_____	_____

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

**Contra Costa**

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

**Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura**

- 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. **See Attachment 1**
- 2a. If the point of diversion/rediversion is being changed, are there any person(s) taking water from the stream between the present point of diversion/rediversion 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 **See Attachment 1.**  
\_\_\_\_\_  
\_\_\_\_\_
- 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 Attachment 1.**  
\_\_\_\_\_
- 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 Attachment 1.**  
\_\_\_\_\_
- 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 Attachment 1.**  
\_\_\_\_\_
- 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 Attachment 1.**  
\_\_\_\_\_

- 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 Attachment 1.
- 
- 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 Attachment 1.
- 
- 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: February 8, 2010 at Sacramento, California



Signature(s)

(925) 932-0151

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).

TRANS-TEMP-PET (11-00)

If your answers require more space than provided, please attach additional pages

**Attachment 1**  
**Responses to Petition Form**

**Overview of Proposed Transfer**

Delta Wetlands Properties (Delta Wetlands) proposes a temporary water transfer program for 2010 whereby 4,064 acres on Webb Tract in the Sacramento River – San Joaquin River Delta would be fallowed and up to 4,500 AF of water not applied by Delta Wetlands on the land would be transferred to the Metropolitan Water District of Southern California (MWD) (see Environmental Information for Petitions, Table 2). 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 would authorize the temporary change to be effective for up to one year.

This 2010 fallowing and transfer program proposes to repeat the 2009 pilot water transfer between Delta Wetlands and MWD that was conducted in cooperation with the California Department of Water Resources and approved by the SWRCB in Orders WR 2009-0003 and WR 2009-0037. For the 2009 fallowing and transfer program, Delta Wetlands implemented weed management, drainage management, and wildlife avoidance measures. Delta Wetlands and DWR also utilized a real-time consumptive use monitoring program conducted by U.C. Davis and the U.S. Geological Survey to verify the amount of water conservation savings. DWR determined that fallowing this acreage in 2009 resulted in a savings of 3,009.6 acre-feet according to the DWR report, “Summary Report for the Determination of Conserved Water Associated with the 2009 Webb Tract Water Transfer Pilot Study” submitted to the Board on December 1, 2009. Delta Wetlands will implement the 2009 fallowing program in 2010 if this transfer is approved. The program is discussed in more detail in the attached “Delta Wetlands Properties 2010 Water Transfer Program Webb Tract Fallowing and Monitoring Plan” (Attachment 2).

Delta Wetlands proposes that the SWRCB approve the proposed 2010 transfer on similar terms and conditions as the 2009 transfer in Order WR 2009-0037.

**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 5115.5 acres on Webb Tract. The sources of water for License 1572 are False River, Fishermans 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.

**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) Point B (False River)	N 574,750 E 1,691,450 N 571,100 E 1,688,350	NW ¼ SE ¼ SW ¼ NW ¼	30 31	3N 3N	4E 4E	MD 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) Point A (above)	N 578,850 E 1,670,550	NW ¼ NE ¼	28	3N	3E	MD

**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

## **Place of Use**

### **Present:**

Webb Tract, Contra Costa County

### **Proposed:**

MWD Service Area as described in maps attached to Petitions for Change for Applications 29062, 29066, 30268 and 30270 (Delta Wetlands Project).

## **Purpose of Use**

### **Present:**

Irrigation

### **Proposed:**

Domestic, power generation, municipal, industrial, salinity control, and water quality control.

## **Season of Use**

### **Present:**

March 1 – November 1

### **Proposed:**

There is no proposed change in the season of use. Surface water not applied to the fallowed land will no longer be diverted from the present points of diversion by Delta Wetlands. The forborne water will be conveyed by the California Department of Water Resources (DWR) or United States Bureau of Reclamation (USBR) to MWD, subject to DWR's export and conveyance capacity from the Delta. MWD will bear the responsibility for obtaining DWR or USBR approval to convey the water to the MWD service area. The forborne water will be made available to MWD on the same schedule that the water would have been consumptively used by the crops absent the fallowing. Water from the temporary transfer will be made available within the authorized season as shown above.

## **Direct Use**

### **Present:**

Delta Wetlands would directly divert up to 63.94 cfs, up to 33,352 AF of water total, in 2010 to irrigate 4,064 acres on Webb Tract in the absence of the transfer.

### **Proposed:**

A total of not more than 4,500 AF will be delivered through the CVP and/or SWP Pumping Plants to the MWD service area at a maximum rate of diversion not to exceed 24.16 cfs.



**1b.**

Under the proposed program, the idling or temporary fallowing of 4,064 acres of corn will result in a savings of approximately 4,500 AF of water over that which would occur in 2010 absent the fallowing program (see Attachment 2). The forborne water will be made available to convey to MWD “on pattern,” that is, on the same schedule that the water would have been consumptively used by the crops fallowed in accordance with the water conserved in 2009 as a result of fallowing Webb Tract and as verified by DWR (see Attachment 2).

**2a.-2c.**

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.

**3a-3b.**

Delta Wetland proposes a program of crop fallowing and forbearance of diversions on Webb Tract consistent with the 2009 pilot water transfer completed in cooperation with the California Department of Water Resources and approved by the SWRCB in Orders WR 2009-0003 and WR 2009-0037. Please see Attachment 2 for more information.

If the proposed transfer is approved, the fallowing and forbearance program on Webb Tract will result in a net reduction of consumptive use of approximately 4,500 AF during 2010. 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 pattern,” 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.

If this petition is approved, DWR will adjust the Delta Gross Channel Depletion (GDEPL) factor used in calculating the Net Delta Outflow Index of SWRCB Decision 1641 (NDOI) to reflect water conserved as a result of fallowing on Webb Tract. Please see Attachment 2 for more information.

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

**4 and 5a.**

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

#### **5c and d.**

Webb Tract covers approximately 5,450 acres, including 4,064 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, 4,064 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](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. 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 wildlife would occur. 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. 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. As stated above, DWR shall adjust the Delta Gross Channel Depletion (GDEPL) factor used for calculating the Net Delta Outflow Index of SWRCB Decision 1641 (NDOI) to reflect water conserved as a result of fallowing on Webb Tract.

**Attachment 2**  
**Delta Wetlands Properties**  
**2010 Water Transfer Program**  
**Webb Tract Fallowing and Monitoring Plan**

**February 8, 2010**

## **INTRODUCTION**

This document describes Delta Wetlands Properties' (Delta Wetlands) water transfer program proposed for 2010. The 2010 transfer proposes to continue the 2009 pilot water transfer completed in cooperation with the California Department of Water Resources. This 2010 water transfer program explicitly addresses conditions identified by State Water Resources Control Board (SWRCB) Orders WR 2009-003 and 2009-0037 approving Delta Wetlands' 2009 transfer petitions, including the following elements:

- Estimation of water made available through fallowing, taking into consideration potential evapotranspiration and evaporation on fallowed fields;
- Specific measures to control weed growth on fallowed fields;
- Specific measures to monitor fallowed fields to determine the actual amount of water saved through fallowing;
- Measures to ensure weed control does not unreasonably affect ground-nesting birds or other wildlife; and
- Measures to ensure that water levels in irrigation canals are regulated to maintain perennial aquatic and riparian habitat.

## **OVERVIEW OF PROJECT**

Delta Wetlands is proposing a temporary water transfer program for 2010, whereby up to 4,063.77 acres on Webb Tract in the Sacramento River-San Joaquin River Delta would be fallowed, and whereby the water not applied by Delta Wetlands on the land would be transferred to the Metropolitan Water District of Southern California (MWD).

**Fallowing:** Delta Wetlands will fallow the selected acreage and withhold surface water irrigation on the acreage, making this surface water available to MWD.

**Water Transfer:** The surface water not applied to the fallowed land will not be diverted by Delta Wetlands. The forborne water will be conveyed by the California Department of Water Resources (DWR) to MWD, subject to DWR's export and conveyance capacity from the Delta. MWD bears the responsibility for obtaining DWR approval to convey the water to MWD's place of use. The transfer to MWD requires the approval of the SWRCB for a temporary change in the points of diversion, place of use and purpose of use of Delta Wetlands water rights license.

## **DELTA WETLANDS' WATER RIGHTS**

Delta Wetlands irrigates Webb Tract using a water right license issued to Delta Farms Reclamation District No. 2026. The District has authorized Delta Wetlands to transfer the water diverted pursuant to the water right licenses. The license 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 (A002952) 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.

## **PROJECTED WATER USE IN THE ABSENCE OF THE TRANSFER PROGRAM**

In 2008, the irrigated acreage on Webb Tract was planted in corn (4,063.77 acres). This acreage was fallowed in 2009. If the fallowing program is not approved for 2010, Webb Tract will be planted in corn. Water consumption in 2010 absent the water transfer is estimated to be at approximately 4,500 AF.

## **ESTIMATION OF WATER MADE AVAILABLE THROUGH FALLOWING**

The idling or temporary fallowing of 4,063.7 acres of corn is estimated to result in a savings of approximately 4,500 AF of water over that which would occur in 2010 absent the fallowing program. Fallowing this acreage in 2009 resulted in a savings of 3,009.6 acre-feet according to the DWR report, "Summary Report for the Determination of Conserved Water Associated with the 2009 Webb Tract Water Transfer Pilot Study" submitted to the Board on December 1, 2009 per Term X of Order WR 2009-0037. The amount of water conserved in 2009 was considerably less than predicted. Two major factors reduced the observed water conservation. The 2009 summer temperatures in the Delta were the coldest of the 13 years of data from the CIMIS weather station on Twitchell Island. Lower summer temperatures reduce the evapotranspiration for corn; consequently, the net savings from fallowing corn at lower temperatures is less. The weed growth on Webb Tract during fallowing was greater than anticipated, especially from late-July to early September. A more aggressive abatement program in 2010 that includes better drainage, discing, mowing, and other management measures will better control weed growth and reduce evapotranspiration from the fallowed fields. Less weed growth will save a significant amount of water. Delta Wetlands estimates that more normal summer time temperatures and more aggressive weed management in 2010 will produce a 50% increase in water savings over 2009. Delta Wetlands will work with DWR to confirm this estimate and to implement the real-time monitoring program described below.

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.

The saved water will be made available to convey to MWD "on pattern," that is, on the same schedule that the water would have been consumptively used by the crops fallowed. The water

transfer program will reduce in-basin water demand by approximately 4,500 AF. As discussed below, DWR must adjust the Net Delta Outflow Index in order to account for this conserved water in Delta operations.

**PROPOSED ADJUSTMENT TO NET DELTA OUTFLOW INDEX**

Delta Wetlands proposes that DWR adjust the Delta Gross Channel Depletion (GDEPL) factor used in calculating the Net Delta Outflow Index (NDOI) of SWRCB Water Right Decision 1641 (Revised) to reflect water conserved as a result of fallowing on Webb Tract in 2010. SWRCB Decision 1641 defines GDEPL in Figure 3 (page 190) as follows:

*Delta gross channel depletion for the previous day based on water year type using the DWR's latest Delta land use study... The DWR is currently developing new channel depletion estimates. If these new estimates are not available, DAYFLOW channel depletion estimates shall be used.*

The pattern of water conservation on Web Tract in 2009 can be used to form 2010 water conservation estimates and GDEPL adjustments. DWR determined that fallowing of Webb Tract in 2009 produced the following water conservation:

2009	Water Conserved (AF)	#days	Water Conserved (avg CFS)
May	115.6	15	3.89
June	873.2	30	14.67
July	1188.7	31	19.33
August	774.8	31	12.60
September	57.3	30	0.963
	3009.6		

If the proposed transfer is approved by the SWRCB, Delta Wetlands proposes that DWR reduce GDEPL estimates by the following amounts to account for water conserved as a result of fallowing on Webb Tract.

2010	Estimated Water Conserved (AF)	Daily GDEPL Reduction (CFS)
May	175	4.86
June	1310	18.34
July	1780	24.16
August	1150	15.75
September	85	1.20

## **SPECIFIC MEASURES TO MONITOR FALLOWED FIELDS TO DETERMINE THE ACTUAL AMOUNT OF WATER SAVED THROUGH FALLOWING**

Delta Wetlands will utilize the real-time consumptive use monitoring program conducted by U.C. Davis and the U.S. Geological Survey that was approved by DWR and the SWRCB for the 2009 transfer.

## **SPECIFIC MEASURES TO MANAGE WEED GROWTH ON FALLOWED FIELDS**

Idled fields will be managed to control weed growth to reduce water consumption associated with weeds. Delta Wetlands will use real-time monitoring, described above, to measure evapotranspiration from the fallowed fields. The use of real-time monitoring and remote sensing tools will allow Delta Wetlands to target the locations of discing and minimize the frequency of discing to manage weed growth. Open water, herbaceous upland, riparian woodland and scrub, and freshwater marsh habitats and levee areas will not be disced.

## **MEASURES TO ENSURE WEED CONTROL DOES NOT UNREASONABLY AFFECT GROUND-NESTING BIRDS OR OTHER WILDLIFE**

Open water, herbaceous upland, riparian woodland and scrub, and freshwater marsh habitats and levee areas will not be disced. The use of real-time monitoring, described above, to measure evapotranspiration from the fallowed fields will allow Delta Wetlands to minimize the frequency of discing required to manage weed growth, thereby avoiding and minimizing potential impacts to wildlife, especially ground-nesting birds, that may use the fallowed fields. More than 94% of the land in the region historically used for corn production would be unaffected by Delta Wetlands fallowing program. Given the above, a temporary transfer of the consumptive use portion of the water would not unreasonably affect ground-nesting birds or other wildlife.

DFG staff biologist Corrine Gray commented on the 2009 transfer. On February 8, 2010, Delta Wetlands left a message to notify Ms. Gray that Wetlands would be proposing the same transfer and fallowing program on Webb Tract for 2010. Delta Wetlands has mailed Ms. Gray copies of the Temporary Change Petition and this fallowing program description. Delta Wetlands will follow-up with Ms. Gray after she has had an opportunity to review the documents.

## **MEASURES TO ENSURE THAT WATER LEVELS IN IRRIGATION CANALS ARE REGULATED TO MAINTAIN PERENNIAL AQUATIC AND RIPARIAN HABITAT**

Island drainage operations and water levels in lakes and canals will not be significantly altered by the fallowing program i.e., canals and lakes that historically contained water on a persistent basis will continue to contain water on a persistent basis. Groundwater elevations control the persistent water levels in the lakes and canals. Groundwater elevations, themselves, are regulated through the management of water levels in the main drainage canals on the islands, through the operation of large pumps. The pumps move water from the main drainage canals and discharge it to the Delta. The operation of the pumps in the main drainage canals will not change as a result of fallowing.

Delta Wetlands' 2009 fallowing report submitted to the SWRCB in compliance with Term 9 of Order WR 2009-0037 noted that water levels in the Webb Tract's drainage ditches were maintained at normal levels and that no changes in the depth or aerial extent of open water habitat at two ponds located in the northeast quarter of the island (105 acres) or surrounding riparian woodland and scrub (approximately 106 acres) and freshwater marsh (approximately 172 acres) were observed during the 2009 fallowing period.

Accordingly, perennial aquatic and riparian habitat will be maintained as it would in the absence of fallowing in 2010.

#### **WATER FORBEARANCE AND TRANSFER MECHANISM**

During the fallowing period, Delta Wetlands will not irrigate the fallowed lands using its licenses or any other water rights, and will implement on-farm weed and water management measures to produce a total net water savings of at approximately 4,500 AF. Delta Wetlands will file a change petition with the SWRCB to make this water available to transfer to MWD.

In 2009, the SWRCB approved Delta Wetlands' petition for a temporary change to the points of diversion, places of use and purposes of use of its water rights licenses in Order WR 2009-0003-DWR and Order WR 2009-0037-DWR. The change order temporarily added the Banks Pumping Plant and Jones Pumping Plant as authorized points of diversion, the MWD service area as an authorized place of use, and domestic, power generation, municipal, industrial, salinity control, and water quality control as purpose of use. Delta Wetlands proposes that the SWRCB approve the 2010 transfer on similar terms and conditions as the 2009 transfer.

No new construction or improvements are needed to transfer the water to MWD.

The issuance of the change petition is exempt from the California Environmental Quality Act pursuant to California Water Code section 1729.



PROOF OF SERVICE

I, Teresa Chan, declare as follows:

I am employed in the City and County of Sacramento, State of California. I am over the age of eighteen years and am not a party to the within cause. My business address is ELLISON, SCHNEIDER & HARRIS L.L.P.; 2600 Capitol Avenue; Sacramento, California 95816-5905; telephone (916) 447-2166.

On February 8, 2010, I served the attached *Petition for Temporary Transfer of Water/Water Rights for Application No. 2952* by putting a true copy thereof in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed to each person shown on the attached service list and by personal service to the SWRCB.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 8, 2010, at Sacramento, California.

  
\_\_\_\_\_  
Teresa Chan

## Service List

California Department of Fish and Game  
John McCamman, Director  
1416 Ninth Street  
Sacramento, CA 95814

Riverside County  
Board of Supervisors  
County Administrative Center  
4080 Lemon Street, 1st Floor  
Riverside, CA 92501

Contra Costa County  
Board of Supervisors  
651 Pine Street, Room 107  
Martinez, CA 94553

San Bernardino County  
Board of Supervisors  
385 N. Arrowhead Ave.  
2nd floor  
San Bernardino, CA 92415-0130

Los Angeles County  
Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

San Diego County  
Board of Supervisors  
1600 Pacific Hwy, Rm 335  
San Diego, CA 92101

Orange County  
Board of Supervisors  
333 W. Santa Ana Blvd, Room 465  
P.O. Box 687  
Santa Ana, CA 92702-0687

Ventura County  
Board of Supervisors  
800 South Victoria Avenue  
Ventura, CA 93009-1920

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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

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2010 FEB -8 PM 3:45

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

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- 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: Corrine Gray; 707-944-5500

**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: \_\_\_\_\_

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.

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

ENVIRONMENTAL INFORMATION FOR PETITIONS


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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: February 8, 2010

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 4,500 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 License 1572 to be effective for up to one year.

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 approximately 4,500 acre-feet of water available for sale as a result of this proposed fallowing program on Webb Tract.

**Methods of Making Water Available**

Delta Wetlands will fallow the selected acreage and withhold surface water irrigation on the acreage, making this surface water available to MWD. 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). This acreage was fallowed in 2009. If the fallowing program is not approved for 2010, Webb Tract will be planted in corn.

This 2010 fallowing and transfer program proposes to repeat the 2009 pilot water transfer between Delta Wetlands and MWD that was conducted in cooperation with the California Department of Water Resources and approved by the SWRCB in Orders WR 2009-0003 and WR 2009-0037. For the 2009 fallowing and transfer program, Delta Wetlands implemented weed management, drainage management, and wildlife avoidance measures. Delta Wetlands and DWR also utilized a real-time consumptive use monitoring program conducted by U.C. Davis and the U.S. Geological Survey to verify the amount of water conservation savings. Delta Wetlands will implement the 2009 fallowing program in 2010 if this transfer is approved. The program is discussed in Attachment 2 to the Petition for Temporary Transfer of Water.

The saved water will be made available to convey to Buyer "on pattern," 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 Attachment 2 to Petition for Temporary Transfer of Water.) 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.

**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 5115.5 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.