



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.**

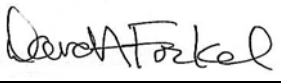
I (we) consulted the California Department of Fish and Game concerning this proposed temporary change. YES (yes/no)

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](http://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 5,426 acres on Bouldin Island in the Sacramento River – San Joaquin River Delta would be fallowed, and up to 10,401 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 1405 (Bouldin Island) only. Proposed changes to License 1572 (Webb Tract) are described in a separate petition filed contemporaneously with this petition.

**Overview of License No. 1405**

Delta Wetlands irrigates Bouldin Island using water right License 1405 (A002948) issued to Reclamation District No. 756. License 1405 has a 1922 priority date. Water has been diverted under this license for over 80 years to irrigate a variety of crops. License No. 1405 authorizes the maximum direct diversion of 71.56 cfs (34,766 afa) between March 1 and November 1 for irrigation of 6,006 acres on Bouldin Island. The sources of water for License 1405 are Potato Slough, South Fork Mokelumne River, San Joaquin River, and Little Potato Slough. Delta Wetlands is the authorized agent for Reclamation District No. 756 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.

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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 Bouldin Island 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 Bouldin Island 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
Twenty-two existing siphons between Point A and Point B	Mokelumne River	Point A (Mokelumne River and Little Potato Slough)	N 593,600 E 1,690,100	SW ¼ NE ¼	7	3N	4E	MD
		Point B (San Joaquin River)	N 581,700 E 1,691,950	NE ¼ SE ¼	19	3N	4E	MD
One existing siphon between Point B and Point C	San Joaquin River	Point B (above)						
		Point C (Potato Slough)	N 579,250 E 1,692,500	NE ¼ NE ¼	30	3N	4E	MD
Sixteen existing siphons between Point C and Point D	Potato Slough	Point C (above)						
		Point D (Little Potato Slough)	N 574,150 E 1,711,400	NW ¼ NE ¼	35	3N	4E	MD
Six existing siphons between Point D and Point A	Little Potato Slough	Point D (above)						
		Point E (Little Potato Slough)	N 589,350 E 1,713,100	NE ¼ NE ¼	14	3N	4E	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

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## **Place of Use**

### **Present:**

Bouldin Island, 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**

Herbaceous upland habitat and levee areas 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 Bouldin Island. 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 Bouldin Island 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 Bouldin Island 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 Bouldin Island will result in a net reduction of consumptive use of at least 10,401 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 Bouldin Island 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.

Bouldin Island covers approximately 5,426 acres of land, including 4,295 acres of corn, 640 acres of rice, and 310 acres of tomatoes. Small amounts of fallow agricultural land, herbaceous upland, open water habitat, and other land types also exist.

Bouldin Island provides limited suitable habitat for western pond turtles; high quality habitat for this species is limited to areas not subject to active agriculture, e.g., wide canals and water ways and fallowed fields. Western pond turtles have been observed in these areas of Bouldin Island. No giant garter snakes have been reported.

Bouldin Island provides suitable foraging habitat for: northern harriers; Swainson's hawk; and greater sandhill cranes. 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 Bouldin Island 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 Bouldin Island, 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 tricolored blackbirds were observed on Bouldin Island during surveys. Bouldin Island also provides suitable foraging and/or wintering habitat for Cooper's hawk, ferruginous hawk, bald eagle,



white-tailed kite, American peregrine falcon, and short-eared owl. Cooper's hawk, white-tailed kite, and American peregrine falcon were observed on Bouldin Island during surveys.

Herbaceous upland habitat and levee areas would be unaffected by the proposed fallowing program.

Bouldin Island is located in San Joaquin County, California. In 2008, 4,295 acres of corn were planted on Bouldin Island. 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 Bouldin Island 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., Webb Tract, which could result in fallowing 4,189 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 wildlife would occur.