

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0030-DWR

IN THE MATTER OF LICENSE 6222 (APPLICATION 7012)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 5,000 ACRE-FEET OF WATER
FROM
EAST SIDE CANAL & IRRIGATION COMPANY AND STEVINSON WATER DISTRICT
TO U.S. BUREAU OF RECLAMATION'S
EAST BEAR CREEK UNIT OF THE SAN LUIS NATIONAL WILDLIFE REFUGE

SOURCE: Bear Creek tributary to San Joaquin River

COUNTY: Merced

1.0 SUBSTANCE OF PETITION

On April 28, 2010,

East Side Canal & Irrigation Company and
Stevinson Water District
c/o Robert D. Kelly, Jr.
P.O. Box 818
Newman, CA 95360

filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change under Water Code Section 1725, et seq. Pursuant to the petition, the East Side Canal & Irrigation Company and the Stevinson Water District (Petitioners) seek to transfer up to 5,000 acre-feet (af) of water to the U.S. Bureau of Reclamation's East Bear Creek Unit of the San Luis National Wildlife Refuge (SLNWR). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. The Petitioners propose to transfer up to 5,000 af of water under water right License 6222 to the SLNWR. Water will be diverted from Bear Creek into the SLNWR, which is downstream of the Petitioners' licensed point of diversion on Bear Creek. The water will be transferred to the SLNWR through November 1, 2010.

The Petitioners currently deliver water to the Merquin County Water District (Merquin), which is within the place of use of License 6222. The Petitioners recently completed piping 46,150 linear feet of canals within Merquin, which has resulted in the conservation of 4,707 af of water previously lost to evaporation and deep percolation. In previous years, the Petitioners provided Merquin with 18,211 af of water, however due to conservation from the recently completed piping project, Merquin was provided only 14,211 af of water this year. Up to 4,000 af of the conserved 4,707 af is proposed to be delivered to the SLNWR under this transfer.

Additionally, 14,250 linear feet of canals have been piped within Stevinson, which will result in the conservation of 1,455 af of water previously lost to evaporation and deep percolation. The conservation of this 1,455 af of water resulted in a reduction of 1,000 af of water delivered into certain fields within Stevinson's licensed place of use as follows: Field ID's 801, 802, 89 (500 af reduction)

(Highline No. 1 and Rice Field laterals); Field ID's 52, 53, 54, 55, 56, 64 (300 af reduction) (Turner Slough, Pump No. 1 and No. 2); Field ID's 16, 17, 18, 25 (200 af reduction) (Sprole Ditch, Second Avenue Ditch, Home Ranch Lateral). All of the locations are metered. The 1,000 af conserved is proposed to be delivered to the SLNWR under the transfer. Therefore, in total 5,000 af (4,000 af from Merquin and 1,000 af from Stevinson) is proposed to be delivered to SLNWR under the transfer.

2.0 BACKGROUND

2.1 Substance of License 6222. License 6222 was issued on April 11, 1961, pursuant to Application 7012, for direct diversion of 60 cubic feet per second (cfs) from Bear Creek and 13 cfs from Arena Spillway for a maximum total direct diversion of 73 cfs. There are two points of diversion under the license, one on Bear Creek and one on Arena Spillway. The season of diversion is from March 1 to November 1 of each year. The purpose of use under the license is irrigation within the service area of the Petitioners which comprises a net area of 7,336.08 acres within a gross area of 18,347 acres within T6-8S, R9-10E, MDB&M.

Much of the water diverted under License 6222 is provided by the Merced Irrigation District (MID) pursuant to a 1928 settlement agreement. As such, the license indicates that along with diversions of the natural flow of Bear Creek and Arena Spillway, water diverted under the license may include an undetermined amount of water released by MID in accordance with the settlement agreement.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add a point of diversion at the SLNWR, located within the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 8, T8S, R11E, MDB&M. The East Bear Creek Unit of the San Luis National Wildlife Refuge will temporarily be added as a place of use and Wildlife Enhancement will temporarily be added as a purpose of use under License 6222.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

On May 18, 2010, public notice of the petition for temporary change was provided as follows: 1) via first class mail to interested parties; 2) by posting on the Division's website; 3) via the State Water Board's Lyris email notification program; 4) and by publication in the Merced Sun-Star on May 21, 2010. John Herrick, Esq., submitted timely comments regarding the proposed temporary change. The comments and the State Water Board's response are briefly summarized below.

3.1 Comments of John Herrick, Esq.¹ Mr. Herrick commented on the proposed temporary change via email dated May 18, 2010. Mr. Herrick listed two concerns: 1) whether the transfer had begun prior to the notice, as the petition indicated the transfer would start in April 2010; and 2) information included with the petition did not clearly establish whether less water would be used by the Petitioners, which is required in order to approve a transfer.

State Water Board Response:

The proposed transfer has not commenced and will not commence until approval by the State Water Board. The water proposed for transfer is water that was previously delivered to Merquin and areas within Stevinson prior to completion of replacement of the open channel conveyance system with piping. Through piping delivery of water to Merquin and some areas of Stevinson, the Petitioners have conserved up to 6,162 af of water that normally would have been lost to seepage and evaporation and is typically accounted for in total irrigation uses by Merquin. Therefore, the 5,000 af of water proposed for transfer under this petition is available for transfer this year.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Petitioners filed their petition for a temporary transfer of water pursuant to Water Code section 1725, et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from

¹ Mr. Herrick did not name any clients that he is representing in this matter.

the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption. The State Water Board, however, may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.)

Although approval of temporary transfers is exempt from CEQA, the State Water Board's purview as a responsible agency under CEQA involves impacts to water resources, and by mitigating and requiring monitoring to the same extent as would be required if the approval were subject to CEQA, the State Water Board helps assure that the requirements of the Water Code to avoid unreasonable impacts on fish and wildlife and to avoid injury to legal users of water are satisfied. There is no evidence that approval of the petition will unreasonably affect fish, wildlife, or other instream uses or have any adverse impacts on public trust resources.

5.0 REQUIRED FINDINGS OF FACT

5.1 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored.

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer was previously delivered to Merquin and within Stevinson's service area via unlined earthen channels and since those channels were replaced with pipe, percolation and evaporation losses no longer occur. Therefore, the quantity of water normally supplied to Merquin and a portion of Stevinson's service area to make up for conveyance losses can now be transferred to the SLNWR. The Petitioners indicate that absent the proposed change, the 5,000 af of water would be consumptively used within the existing service area of the Stevinson Water District and/or the historic service area of the East Side Canal & Irrigation Company.

The triennial Report of Licensee form for 2007, 2008, and 2009 is the most recent report in the file. Water Conservation Credit for the piping project was not claimed on the form as required by Water Code section 1011. The Division will allow the credit for 2010 for purposes of this transfer because the reporting for 2010 is not yet due and the piping project was recently completed. In the future, no credit will be given unless water savings are properly reported on the Report of Licensee form.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

5.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) Under this transfer, water will remain in Bear Creek and will be conveyed downstream of the Petitioners' points of diversion to the SLNWR where it will be diverted from Bear Creek for use within the refuge.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed temporary change will not injure any legal user of the water.

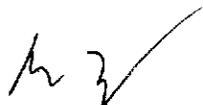
ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and point of diversion under License 6222 (Application 7012) of East Side Canal & Irrigation Company and Stevinson Water District (Petitioners) for the transfer of up to 5,000 acre-feet (af) of water is approved.

All existing terms and conditions of License 6222 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing through November 1, 2010.
2. The place of use under License 6222 is temporarily expanded to include the East Bear Creek Unit of the San Luis National Wildlife Refuge (SLNWR) which consists of 3,694 acres within Sections 11-13, T8S, R10E, MDB&M; and Sections 3, 4, 6-10, 17-20, and 29, T8S, R11E, MDB&M.
3. The East Bear Creek pump station is temporarily added as a point of diversion to License 6222, located at: California Coordinate System NAD83, Zone 3, North 1,914,163 feet and East 6,480,365 feet, within the NE ¼ of SE ¼ of Section 8, T8S, R11E, MDB&M
4. Fish and wildlife enhancement is temporarily added as a purpose of use to License 6222.
5. Water transferred pursuant to this Order will be delivered from the Stevinson Water District gate at the intersection of the East Side Canal and Bear Creek. The quantity of water transferred to the SLNWR will not exceed the quantity of water spilled at the Stevinson Water District gate as continuously measured by Stevinson Water District's Bear Creek Meter 2 located at California Coordinate System NAD83, Zone 3, North 1,915,154 feet and East 6,497,908 feet.
6. Within 90 days of the completion of the transfer, but no later than January 30, 2011, the Petitioners shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. The total and weekly quantities of water (in af) delivered to the SLNWR under this Order.
 - b. Documentation that Merquin received 4,000 af less water during the one-year period from March 1 through November 1, 2010 then from the previous year's delivery period of March 1 through November 1, 2009.
 - c. Documentation that the Stevinson service areas (as specified in Section 1.1 above) received 1,000 af less water during the one-year period from March 1 through November 1, 2010 then from the previous year's delivery period of March 1 through November 1, 2009.

STATE WATER RESOURCES CONTROL BOARD


Barbara Evoy
Deputy Director for Water Rights

Dated: **OCT 20 2010**

