

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). 7012    Permit No. 5733    License No. 6222

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

**Present Holder and User of Water Right**

<u>East Side Canal &amp; Irrigation Company</u>	<u>Robert D. Kelley, Jr.</u>	<u>(209) 634-4908</u>
Person or Company name	Contact person	Telephone No.
<u>P.O. Box 818</u>	<u>Newman</u>	<u>CA</u>
Address	City	State
<u>wildcatkel@stevinsoncorp.com</u>		<u>95630</u>
E-MAIL (For noticing purposes)		Zip Code

**Co-petitioner**

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

**Proposed New User**

<u>United States Bureau of Reclamation</u>	<u>Timothy G. Rust</u>	<u>(916) 978-5516</u>
Person or Company name	Contact person	Telephone No.
<u>2800 Cottage Way</u>	<u>Sacramento</u>	<u>CA</u>
Address	City	State
<u>trust@usbr.gov</u>		<u>95825</u>
E-MAIL (For noticing purposes)		Zip Code

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** (attach additional pages, as needed):

**Amount of Water to be Transferred** up to 5,000 Acre-feet (AF). If the basis of right is direct diversion, the average rate of diversion for the maximum 30 day period of use is 15 cubic feet per second (cfs).

**Period of Transfer/Exchange** (Not to exceed one year) April 2011 through October 2011

**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  
Proposed \_\_\_\_\_

**Place of Use**

Present See Attachment  
Proposed \_\_\_\_\_

**Purpose of Use**

Present Irrigation  
Proposed Wildlife Enhancement

	<b>Season of Use</b>	<b>Direct Use (cfs)</b>	<b>Storage (ac-ft)</b>
Present	<u>Mar 1–Nov 1</u>	<u>Combined Max 163 cfs</u>	_____
Proposed	<u>No Change</u>	<u>No Change</u>	_____

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

Merced

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

Merced

- 1a. Would the transfer/exchange water have been consumptively used or stored in the absence of the proposed temporary change (See WC 1725)? Yes  
(yes/no)
- 1b. Provide an analysis which provides documentation that the amount of water to be transferred/exchanged would have been consumptively used or stored in the absence of the proposed temporary change.
- 2a. If the point of diversion/diversion is being changed, are there any person(s) taking water from the stream between the present point of diversion/diversion and the proposed point? No  
(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? No  
(yes/no)
- 2c. If the answer to 2a. or 2b. is yes, provide the name and address. Also provide the name and address of other persons known to you who may be affected by the proposed change.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 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
- 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
- 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. Anthony Toto (559) 445-6278 opinion/comments pending.
- 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. Brian Erlandsen (559) 243-4014 opinion/comments pending.

- 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. Effects will be beneficial as water will be utilized to enhance wildlife.
- 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). Water will be used to enhance wildlife.
- 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 STATE WATER BOARD 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: Feb 7 2011 at Sacramento, California

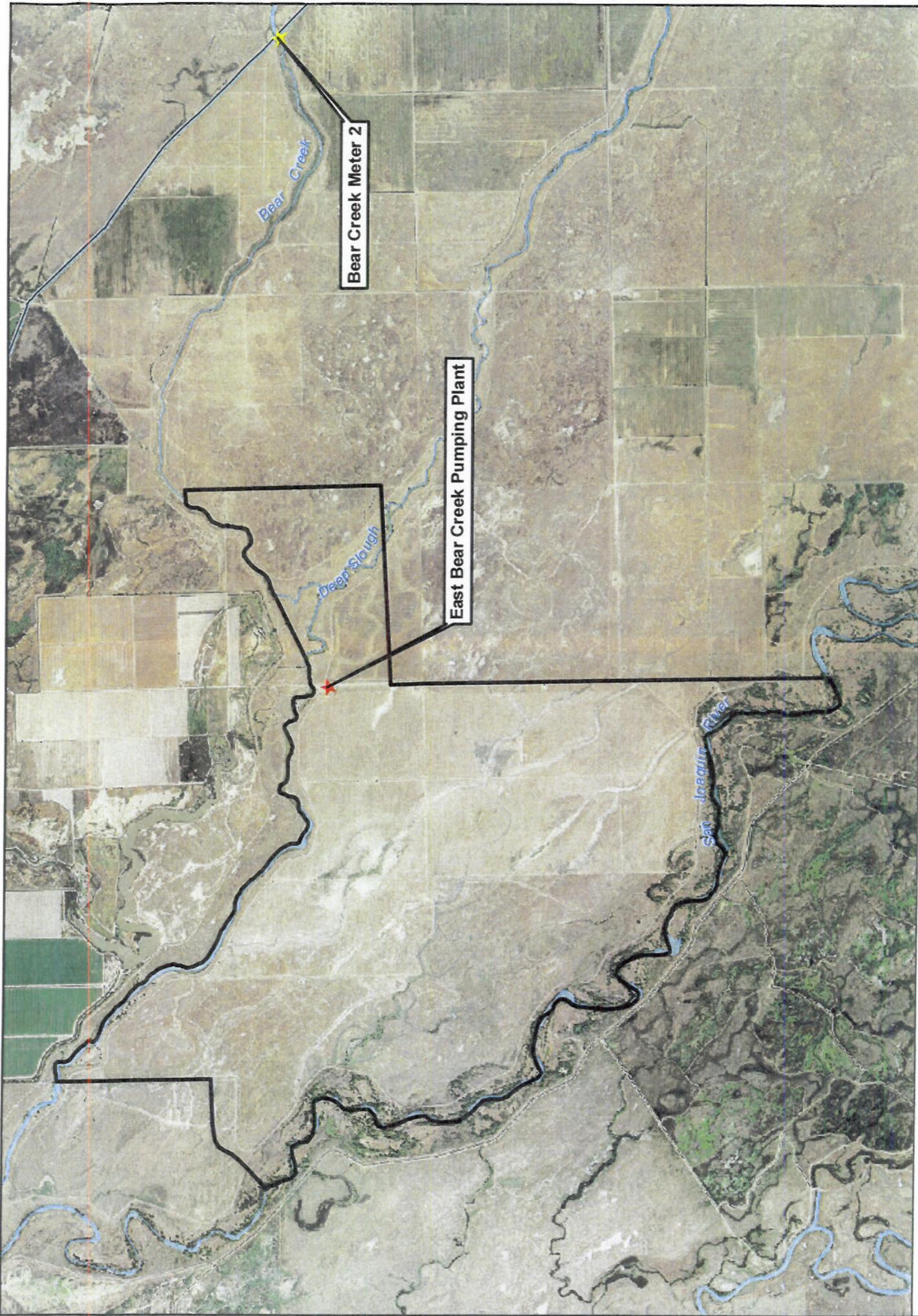
\_\_\_\_\_  
Signature(s)

(209 ) 634-4908  
Telephone No.

**NOTE:** This petition shall be accompanied by all information required by this form and W.C. Section 1725 et. seq, and the fees before the State Water Board 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.

**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.



# Water Acquisition for East Bear Creek Unit

East Bear Creek Unit

Date: April 20, 2010  
File Name: N:\SpecialProjects\Ea\Bear\Seismic\MOE\EastBear\ea1.mxd



## Attachment A

### *Point of Diversion / Rediversion*

Existing: Intersection of Bear Creek and the East Side Canal ((X) - 120.7190657 (Y) 37.2543404 NAD 83 Datum.)

Proposed:

Bear Creek Meter 2 ((X) -120.7190657 (Y) 37.2543404 NAD 83 Datum.). This is where water is spilled back into Bear Creek at the East Side Canal

East Bear Creek Pumping Plant at San Luis National Wildlife Refuge ((X) -120.7793324 (Y) 37.25148862 NAD 83 Datum.) This is where water is diverted from Bear Creek for use on the Refuge.

### *Place of Use*

Existing: Historic Service Area of Stevinson Water District and East Side Canal and Irrigation Company totaling 18,347 acres within Township 6, 7 and 8 south, Ranges 9 and 10 east.

Proposed: The East Bear Creek Unit of the San Luis National Wildlife Refuge, totaling 3694 acres within

Section 11, T 08 S, R 10 E, MDB&M  
Section 6, T 08 S, R 11 E, MDB&M  
Section 4, T 08 S, R 11 E, MDB&M  
Section 3, T 08 S, R 11 E, MDB&M  
Section 12, T 08 S, R 10 E, MDB&M  
Section 7, T 08 S, R 11 E, MDB&M  
Section 8, T 08 S, R 11 E, MDB&M  
Section 9, T 08 S, R 11 E, MDB&M  
Section 10, T 08 S, R 11 E, MDB&M  
Section 13, T 08 S, R 10 E, MDB&M  
Section 18, T 08 S, R 11 E, MDB&M  
Section 17, T 08 S, R 11 E, MDB&M  
Section 19, T 08 S, R 11 E, MDB&M  
Section 20, T 08 S, R 11 E, MDB&M  
Section 29, T 08 S, R 11 E, MDB&M

Response to 1b.

Water supplies originate from the various sources identified in the License and are diverted into the East Side Canal (constructed in the late 1800s). All

water diverted into the East Side Canal is consumptively used, and the District manages its irrigation system so that there are no agricultural return flows. With this in mind, water diverted under License 6222 has historically been consumptively used within the existing place of use. Much of the water diverted pursuant to License 6222 is provided by the Merced Irrigation District pursuant to a 1928 settlement agreement, which was incorporated into a decree of the Merced County Superior Court. (See *Stevinson Water District v. Roduner* (1950) 36 Cal. 2d 264 [water diverted under the license includes “an undetermined amount of water released by the Merced Irrigation District in accordance with Decree of the Superior Court, Merced County, No. 6179, entered February 11, 1930”].)

The Stevinson Water District (Stevinson) and East Side Canal and Irrigation Company (East Side) deliver water to the Merquin County Water District (Merquin). Merquin is located within the existing place of use of the water right license. Stevinson and East Side have completed piping 46,150 linear feet of open ditches within Merquin, which resulted in the conservation of 4,707 acre-feet of water previously lost to evaporation and deep percolation. The piping project has directly resulted in a reduction of deliveries to Merquin of 4,000 afa. Stevinson and East Side meter deliveries to Merquin and Merquin will receive no more than 14,211 af of deliveries this year under its contract with Stevinson and in all subsequent years, down from a previously delivery obligation of 18,211 af. This 4,000 af is proposed to be delivered to the Refuge under the proposed transfer.

Stevinson’s and East Side’s delivery obligation to Merquin has a single shortage provision, which is only applicable when Stevinson’s supplies are reduced by the Merced Irrigation District. Merced Irrigation District supplies are reduced only where the “reservoir or reservoirs of the [Merced Irrigation] District do not fill on or before June 15th to the amount of 289,000 acre feet.” (Agreement between Merced Irrigation District and James J. Stevinson dated October 29, 1929, entered as a Decree of the Superior Court, Merced County, No. 6179, entered February 11, 1930.) This shortage provision was entered when old Exchequer Dam was in place on Lake McClure – which was replaced by New Exchequer Dam. This shortage provision has not, to date, taken effect and Merced Irrigation District’s deliveries to Stevinson have never been reduced pursuant to this provision.

Additionally, 14,250 linear feet of piping has been completed within Stevinson, which will result in the conservation of 1,455 acre-feet of water previously lost to evaporation and deep percolation. The conservation of this 1,455 acre feet of water will result in a reduction of water delivered into Field ID’s 801, 802, 89 (500 af) (Highline #1 & Rice Field laterals), Field ID’s 52, 53, 54, 55, 56, 64 (300 af) (Turner Slough, Pump #1 & #2), Filed ID’s 16,17,18, 25 (200 AF) (Sprole Ditch, Second Ave. Ditch, Home Ranch Lateral), which are all metered. 1,000 acre feet of the 1,455 is proposed to be

delivered to the Refuge under the proposed transfer. Stevinson will document the reduced deliveries to the above-mentioned Field ID#'s to support the amount transferred.

Absent the transfer to the United States Bureau of Reclamation for use within the San Luis National Wildlife Refuge, this 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.

Response to 3a.

Currently, water is diverted from the various sources, including Bear Creek, into the East Side Canal. Under the proposed transfer, water will remain in Bear Creek and will be conveyed to the San Luis National Wildlife Refuge, where it will be diverted from Bear Creek for use within the Refuge. As this water is normally diverted from Bear Creek, there will be no change in water quality, timing of diversion or use.

Stevinson Water District and the East Side Canal & Irrigation Company manage the irrigation system so that there are no discharges, resulting in no return flows. The Refuge is directly downstream from the existing place of use, within the same local watershed. As such, there is no expected change in return flows.

Response to 3b.

Water diverted under License No. 6222 is diverted from Bear Creek into the East Side Canal, the main conveyance facility for the Stevinson Water District and The East Side Canal & Irrigation Company. Once diverted into the East Side Canal, the water is conveyed to the existing place of use, into a closed irrigation system, which provides no return flows. Under the proposed transfer, water would remain in Bear Creek and conveyed directly to the proposed place of use, just downstream of the East Side Canal.

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.waterboards.ca.gov/waterrights

ENVIRONMENTAL INFORMATION FOR PETITIONS\*

\* Required for all petitions, including change petitions, time extension petitions, wastewater change petitions and instream flow dedication petitions.

Before the State Water Resources Control Board (State Water Board) can approve a petition, the State Water Board 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.

The proposed change in place of use, point of diversion, and purpose of use will not involve any construction, nor will it result in increased diversions.

Petitioner will forego diversions and allow water to remain in Bear Creek downstream to existing diversion facilities at the East Bear Creek Unit of the San Luis National Wildlife Refuge.

Multiple horizontal lines for additional text input.

See Attachment No. \_\_\_\_

**2. COUNTY PERMITS** NOT APPLICABLE

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

Person contacted: \_\_\_\_\_ 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):

\_\_\_\_\_  
\_\_\_\_\_

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** NONE

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)

\_\_\_\_\_

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:

Brian Erlandsen (559) 243-4014

#### 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 State Water Board will be preparing the environmental document.\*\*  
 I expect that a California public agency other than the State Water Board will be preparing the environmental document.\* Public agency:

Temporary Transfers are exempt from CEQA

(Water Code Section 1725 et seq.)

See Attachment No. \_\_\_\_

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

\*\* Note: CEQA requires that the State Water Board, 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 State Water Board, 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?

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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:

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See Attachment No. \_\_\_\_

**7. ENVIRONMENTAL SETTING**

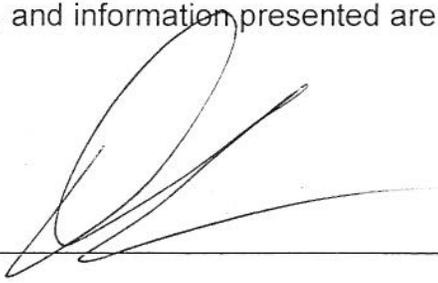
Attach two complete sets of color photographs, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- 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.
- 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: 2/7/11

Signature: 

**Environmental Information for Petitions, Response to Item 7**



**East Bear Creek Unit of San Luis National Wildlife Refuge – new place of use**  
Photograph taken 4/20/2010



**Bear Creek looking downstream from new point of diversion.**  
Photograph taken 4/20/2010

**Environmental Information for Petitions, Response to Item 7**



**Bear Creek looking upstream from new point of diversion**  
Photograph taken 4/20/2010

KSM  
A007012



**SOMACH SIMMONS & DUNN**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814

OFFICE: 916-446-7979 FAX: 916-446-8199

SOMACHLAW.COM

2011 FEB -7 PM 4:11

STATE WATER RIGHTS

February 7, 2011

Via Hand-Delivered

Katherine Mrowka  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Dear Ms. Mrowka

Enclosed please find a Petition for Temporary Transfer and the required Environmental Information for Petitions for a proposed transfer of up to 5,000 acre feet of water from the Stevinson Water District, in Merced County, to the East Bear Creek Unit of the San Luis National Wildlife Refuge, also located in Merced County.

The East Bear Creek Unit is a unit of the San Luis Complex of Refuges recognized in the Central Valley Project Improvement Act (CVPIA). It is located between the San Joaquin River and Bear Creek, just upstream from their confluence. East Bear Creek Refuge, which is managed by the U.S. Fish and Wildlife Service, consists of approximately 4,000 acres of wetland/upland habitat for migratory birds as well as for other aquatic and terrestrial species. Pursuant to the CVPIA, East Bear Creek requires approximately 13,300 acre-feet of water annually for optimum wetland habitat development.

Sections 3406(d)(1) and (d)(2) of the CVPIA authorize and direct the Secretary of the Interior to acquire and provide sufficient water supplies necessary to meet the Level 2 and Level 4 Refuge Water Needs as identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Plan Report. This transfer will attempt to assist in meeting the Level 2 water needs for the East Bear Creek Unit, as directed by the CVPIA.

A similar transfer was previously approved by the SWRCB, in Order WR 2010-0030-DWR. The parties desire to complete another 1-year temporary transfer while the USBR secures a long-term supply for the Refuge. The water proposed for this transfer is the same conserved water that formed the basis of the transfer in WR 2010-0030-DWR.

# 3497.00 Temp Trans  
# 850.00 DFG

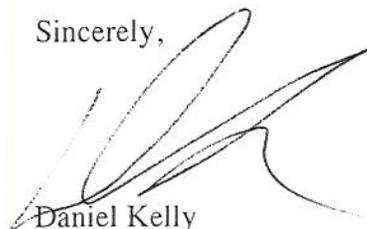
Katherine Mrowka

February 7, 2011

Page 2

Enclosed please find a check in the amount of \$3,497 payable to the State Water Resources Control Board, along with a check for \$850 payable to the California Department of Fish and Game. Also attached hereto is a Proof of Service to the Department of Fish and Game and the Merced County Board of Supervisors. If you have any questions, or require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Kelly', with a large, sweeping flourish extending to the right.

Daniel Kelly

DK:yd

Enclosures

cc: East Side Canal Irrigation Company  
P.O. Box 818  
Newman, CA 95360

United States Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825