

  
**SOMACH SIMMONS & DUNN**  
A PROFESSIONAL CORPORATION  
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500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814  
OFFICE: 916-446-7979 FAX: 916-446-8199  
SOMACHLAW.COM

KDM  
7012

April 28, 2010

2010 APR 28 PM 4:19  
DIVISION OF WATER RIGHTS  
SACRAMENTO

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 7295 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.

Enclosed please find a check in the amount of \$4,185 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,



Daniel Kelly

DK:yd  
Enclosures

\$ 4185  
850  
PDF  
4/28/2010

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

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

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On April 28, 2010 I served the following document(s):

**LETTER TO KATHERINE MROWKA AT THE STATE WATER RESOURCES CONTROL BOARD, DATED APRIL 28, 2010**

**PETITION FOR TEMPORARY TRANSFER OF WATER RIGHTS**

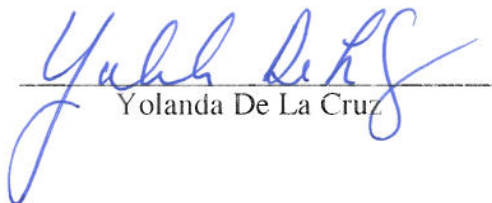
**ENVIRONMENTAL INFORMATION FOR PETITIONS – PETITION FOR CHANGE**

X (by mail) on all parties in said action listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach, Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

Merced County Board of Supervisors  
2222 M Street  
Merced, CA 95340

California Department of Fish and Games  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 28, 2010, at Sacramento, California.

  
Yolanda De La Cruz

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

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 2010 APR 28 PM 4:19  
 DIVISION OF WATER RIGHTS  
 SACRAMENTO

## 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**

East Side Canal & Irrigation Company	Robert D. Kelley, Jr.	209-634-4098
Person or Company name	Contact person	Telephone No.
P.O. Box 818	Newman	CA
Address	City	State
<u>wildcatkel@stevinsoncorp.com</u>		95360
E-MAIL (For noticing purposes)		Zip Code

**Co-petitioner**

Stevinson Water District	Robert D. Kelly, Jr.	209-634-4908
Person or Company name	Contact person	Telephone No.
P.O. Box 818	Newman	CA
Address	City	State
<u>wildcatkel@stevinsoncorp.com</u>		95360
E-MAIL (For noticing purposes)		Zip Code

**Proposed New User**

United States Bureau of Reclamation	Timothy G. Rust	916-978-5516
Person or Company name	Contact person	Telephone No.
2800 Cottage Way	Sacramento	CA
Address	City	State
<u>trust@usbr.gov</u>		95825
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 7295 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 2010 through October 2010

**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.

\$ 4185  
 \$ 850 DFG  
 \$ DP  
 4/28/2010

Present N 45°20'W 5,199.9 feet from SE Corner of Sect 12 T8S R11E MDB&M  
Proposed NE 1/4 SE 1/4 Sect 8 T8S R11E MDB&M

**Place of Use**

Present See Attachment A  
Proposed East Bear Creek Unit of San Luis National Wildlife Refuge (See Attachment B)

**Purpose of Use**

Present Irrigation  
Proposed Wildlife Enhancement

Season of Use	Direct Use (cfs)	Storage (ac-ft)
Present <u>Mar 1 - Nov 1</u>	<u>Combined max of 163cfs</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. No changes proposed place of use is adjacent to existing place of use. See Attachment A.
- 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 A  
\_\_\_\_\_
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. See Attachment A
- 
- 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: 4/27/2010 at STEVINSON, California

[Signature]  
Signature(s)

(209) 634 4508  
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.

## Attachment A

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.

Response to 1b.

The Stevinson Irrigation District and the East Side Canal & Irrigation Company currently operate a closed irrigation system. 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”].)

In certain years, a portion of the water delivered pursuant to the decree and diverted under this license is withheld by the Merced Irrigation District for use within Merced Irrigation District’s service area. In other words, the District agrees to forego a portion of its contract supply with the Merced Irrigation District. During the irrigation season in 2009, the Stevinson Water District agreed to a reduction in its contract supply from the Merced Irrigation District by 5,000 acre-feet to make additional water available to Merced Irrigation District for its customers. This 5,000 acre feet of water was consumptively used within the Merced Irrigation District during 2009. The Stevinson Water District is also in the process of completing the piping of approximately 10 miles of earthen ditches which will result in a contractual reduction of 4,000 acre feet of water that would otherwise be lost to evaporation and deep percolation. The purpose of this water conservation program is to free up water for use by others. The majority, if not all, of water transferred under this temporary petition will be contract supply from the Merced Irrigation District pursuant to the 1930 decree.

As reflected in the Petition for Temporary Change, the transfer will involve up to 7,295 acre-feet of water, which will depend, in part, on availability of additional contractual supplies and redirected supplies. 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.

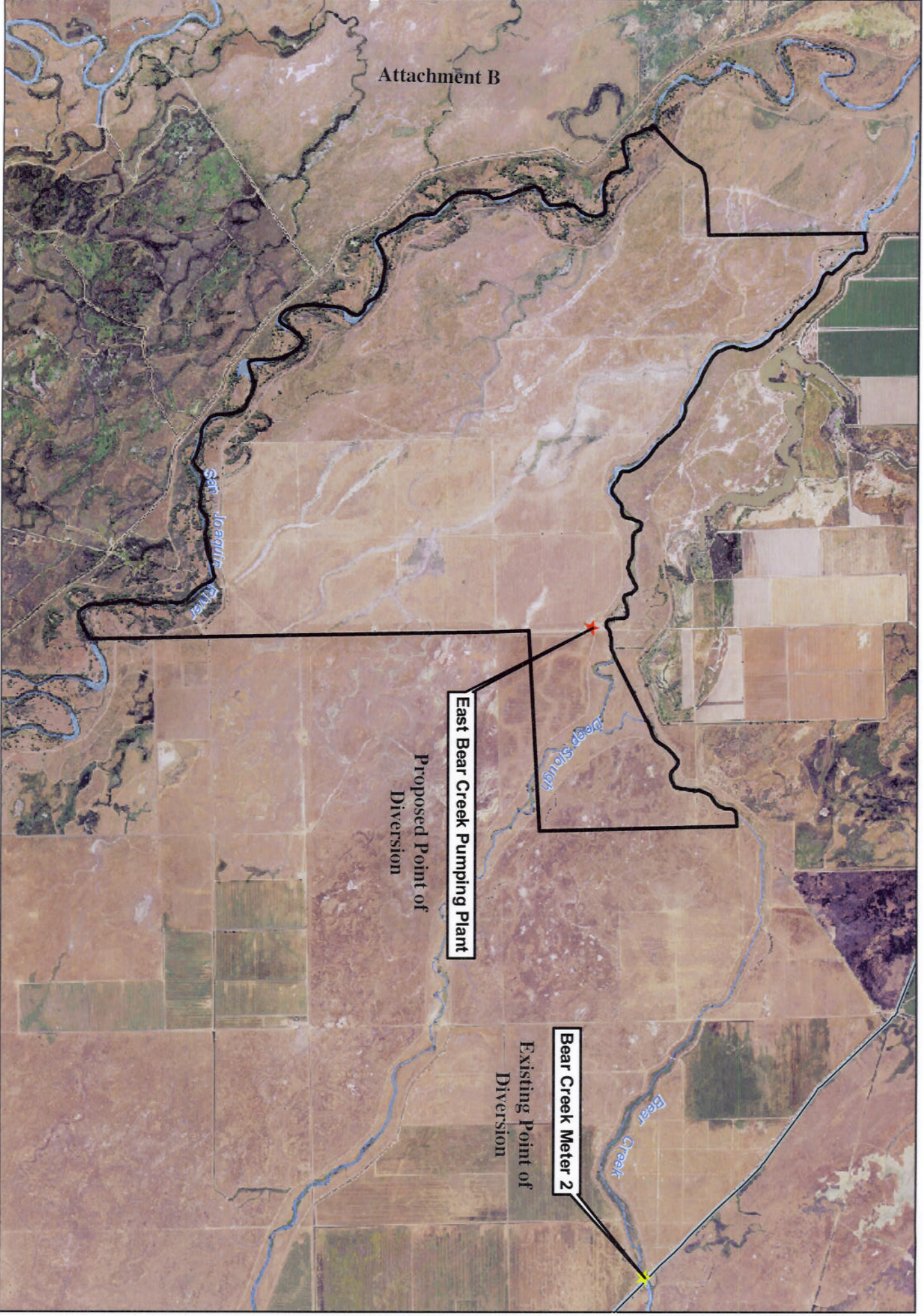


Attachment B

East Bear Creek Unit

# Water Acquisition for East Bear Creek Unit

Date: April 29, 2010  
File Name: N:\Spartan\project\EastBearCreek\work\WD\EastBearA4.d.mxd





ENVIRONMENTAL INFORMATION FOR PETITIONS

**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**

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. \_\_\_\_

ENVIRONMENTAL INFORMATION FOR PETITIONS

- 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 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: 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 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

ENVIRONMENTAL INFORMATION FOR PETITIONS

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.
- 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: 4/27/2010

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