



**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

April 9, 2021

Mr. Erik Ekdahl  
Deputy Director  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
[Erik.ekdahl@waterboards.ca.gov](mailto:Erik.ekdahl@waterboards.ca.gov)

Re. Stevinson Water District/East Side Canal & Irrigation Co. Petition for Change Involving Long-Term Transfer under License 5940 (Application 5724)

Dear Mr. Ekdahl:

On behalf of Stevinson Water District (SWD) and the East Side Canal & Irrigation Company (ESCC) (SWD and ESCC collectively referred to as “Petitioners”), enclosed are the following documents relative to a Petition for Change Involving Long-Term Water Transfer under Water Code section 1735 (Petition) under SWD and ESCC’s License 5940 (Application 5724):

1. Petition for Change Involving Water Transfers Form with Attachment (one original and one copy);
2. Environmental Information Form with Attachments (one original and one copy); and
3. Check in the amount of \$4,495.00 to cover the Petition fees, which is based on a total quantity proposed to be made available for transfer, up to 5,000 acre-feet (AF) annually.

SWD and ESCC are petitioning for approval of a long-term water transfer under Water Code section 1735 to add a temporary place of use to Petitioners’ License 5940, to transfer up to 5,000 AF annually to the San Luis Canal Company (SLCC). The Petition would continue transfers that have occurred since 2012 pursuant to the State Water Resources Control Board’s previous approval of a long-term water transfer petition for License 5940, on the same terms, to improve water quality in SLCC.

Mr. Erik Ekdahl, State Water Resources Control Board  
Re: Stevinson Water District/East Side Canal & Irrigation Co. Petition for Change  
Involving Long-Term Transfer under License 5940  
April 9, 2021  
Page 2

Following your review of the Petition, please contact me if you have any questions or require additional information.

Sincerely,

Kelley M. Taber

Enclosures

cc: Betty Hurley Lindeman, General Manager, Stevinson Water District  
Robert Kelley, East Side Canal & Irrigation Company

KMT:mb

Please indicate County where your project is located here:

Merced

MAIL FORM AND ATTACHMENTS TO:  
State Water Resources Control Board  
DIVISION OF WATER RIGHTS  
P.O. Box 2000, Sacramento, CA 95812-2000  
Tel: (916) 341-5300 Fax: (916) 341-5400  
http://www.waterboards.ca.gov/waterrights

## PETITION FOR CHANGE INVOLVING WATER TRANSFERS

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

- |   |   |  |   |
|---|---|--|---|
| <input type="checkbox"/> <b>Point of Diversion</b><br>Wat. Code, § 1701 | <input type="checkbox"/> <b>Point of Rediversion</b><br>Wat. Code, § 1701 | <input type="checkbox"/> <b>Place of Use</b><br>Wat. Code, § 1701                        | <input type="checkbox"/> <b>Purpose of Use</b><br>Wat. Code, § 1701           |
| <input type="checkbox"/> <b>Temporary Urgency</b><br>Wat. Code, § 1435  | <input type="checkbox"/> <b>Temporary Change</b><br>Wat. Code, § 1725     | <input checked="" type="checkbox"/> <b>Long-term Transfer</b><br>Wat. Code, §§ 382, 1735 | <input type="checkbox"/> <b>Instream Flow Dedication</b><br>Wat. Code, § 1707 |
| Application 5724  | Permit  | License 5940   | Statement   |

I (we) hereby petition for change(s) noted above and described as follows:

**Point of Diversion or Rediversion** – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Present: Intersection of Bear Creek and East Side Canal ((x) - 120.7190657 (y) - 37.2543404 NAD 83 DATUM)

Proposed: No change.

**Place of Use** – Identify area using Public Land Survey System descriptions to ¼-¼ level; for irrigation, list number of acres irrigated.

Present: See Attachment 1

Proposed: See Attachment 1.

**Purpose of Use**

Present: Irrigation

Proposed: Irrigation

**Instream Flow Dedication** – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Upstream Location: N/A

Downstream Location: N/A

List the quantities dedicated to instream flow in either:  cubic feet per second or  gallons per day:

|     |     |     |     |     |     |     |     |     |     |     |     |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|

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|  |  |  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|--|--|

Will the dedicated flow be diverted for consumptive use at a downstream location?  Yes  No

If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

**Proposed New User(s)**

Provide the names, addresses, and phone numbers for all proposed new user(s) of the water right.

San Luis Canal Company (SLCC), 11704 Henry Miller Ave, Dos Palos, CA 93620, (209) 387-4305

**Amount of Water to be Transferred**

5,000.00 acre-feet will be transferred. If the basis of right is direct diversion, the average rate of diversion for the maximum 30-day period of use is 163.00 cubic feet per second or million gallons per day.

**General Information – Provide the following information, if applicable to your proposed change(s).**

Have you attached an analysis which documents that the amount of water to be transferred or exchanged would have been consumptively used or stored in the absence of the proposed temporary change or long-term transfer?  Yes  No

Have you attached an analysis of any changes to streamflow, water quality, timing of diversion or use, return flows, or effects on legal users from the proposed temporary change or long-term transfer?  Yes  No

Have you attached an analysis that shows the proposed temporary change or long-term transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses?  Yes  No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
 ownership  lease  verbal agreement  written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Stevinson Water District (SWD) and East Side Canal & Irrigation Company (ESCC) own the point of diversion. The transfer will occur pursuant to a long-term transfer agreement between SWD, ECC, and SLCC.

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

N/A. No change in point of diversion.

**All Right Holders Must Sign Below:** I (we) declare under penalty of perjury that this involves only the amount of water which would have been consumptively used or stored in the absence of the proposed temporary change, and that the above is true and correct to the best of my (our) knowledge and belief.

Dated 04/12/2021 at Sacramento, California

  
Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

**NOTE: All petitions must be accompanied by:**  
(1) the form Environmental Information for Petitions, available at:  
[http://www.waterboards.ca.gov/waterrights/publications\\_forms/forms/docs/pet\\_info.pdf](http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf)  
(2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/fees/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/)  
(3) Department of Fish and Wildlife fee of \$850 (Pub. Resources Code, § 10005)

# **ATTACHMENT 1**

**Attachment 1**  
**to**  
**Stevinson Water District/East Side Canal & Irrigation Co.**  
**Petition for Change Involving Long-Term Water Transfer Place of Use**  
**(Water Code, § 1735)**

**Introduction**

Stevinson Water District (SWD) and East Side Canal & Irrigation Company (ESCC) (SWD and ESCC collectively referred to as “Petitioners”) are filing this Petition for Change (Petition) to implement a long-term water transfer program between SWD, ESCC and San Luis Canal Company (SLCC). SLCC is a private mutual water company that holds historic water rights from the San Joaquin River system. Water deliveries within the boundary of SLCC are managed by Henry Miller Reclamation District No. 2131, in cooperation with SLCC.

Petitioners together hold water rights under License 5940 (Application 5724) to divert from Bear Creek and Owens Creek. The water proposed for transfer has been made available by conservation projects implemented in 2011. Pursuant to a 2012 Order of the State Water Resources Control Board (State Water Board) approving a change petition for long-term water transfer to temporarily add the SLCC service area to the place of use for License 5940<sup>1</sup> (Order), Petitioners have transferred 5,000 acre-feet (AF) per year to SLCC, and the conserved water has been used for irrigation within SLCC’s service area. The change in place of use of License 5940 authorized by the Order expires January 1, 2022.

Petitioners and SLCC desire to continue transfers as authorized under the Order. Petitioners therefore propose to continue to transfer up to 5,000 AF annually under water right License 5940 to SLCC, using the same point of diversion and same conveyance facilities, for irrigation use in the same expanded place of use (Transfer Program). Consistent with the Order, water will be diverted from Bear Creek into the East Side Canal, the main conveyance facility for SWD, at the existing point of diversion under License 5940. Once diverted into the East Side Canal, the water will be conveyed to the proposed expanded place of use through existing conveyance facilities. Under the Transfer Program these transfers would continue through December 31, 2031. Absent the proposed extension of the existing transfer program to SLCC for use within its service area, this water would be consumptively used within the existing service area of the SWD and/or the historic service area of the ESCC.

The surface water that will be provided under the Petition is of higher quality than other water supplies available to SLCC and will provide water quality benefits within SLCC, thus assisting in achievement of sustainable groundwater management.

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<sup>1</sup> Corrected Order in the Matter of License 5940 (Application 5724) Petition for Long-Term Transfer Involving up to 5,000 Acre-Feet of Water Per Year from East Side Canal & Irrigation Company and Stevenson Water District to San Luis Canal Company (Feb. 8, 2012).

SWD has evaluated the Transfer Program and its potential to result in adverse environmental effects and determined that the Transfer Program is exempt from the California Environmental Quality Act (CEQA). A copy of the Notice of Exemption filed by SWD for the Transfer Program and supporting analysis is included with the Petition.

**Right Holders (License 5940):**

Stevinson Water District  
Betty Hurley Lindeman  
General Manager  
P.O. Box 818  
Newman, CA 95360  
Phone: (209) 668-3282  
Email: [blindeman@stevinsonwd.org](mailto:blindeman@stevinsonwd.org)

East Side Canal & Irrigation Company  
Robert Kelley, Jr.  
President  
P.O. Box 818  
Newman, CA 95360  
Phone: (209) 634-4908  
Email: [rdk@jjsranch.com](mailto:rdk@jjsranch.com)

Future correspondence regarding this Petition should be addressed to SWD/ESCC  
Special Counsel:

Kelley M. Taber  
Somach Simmons & Dunn  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814  
Office: (916) 446-7979  
Email: [ktaber@somachlaw.com](mailto:ktaber@somachlaw.com)

**Place of Use**

*Existing:*

The place of use under License 5940 is the historic service area of the SWD and ESCC, totaling 18,347 acres within T6S, T7S, and T8S, R9E and 10E.

*Proposed:*

The proposed expanded place of use is the boundaries of the San Luis Canal Company, comprising a gross area of 47,350 acres in Merced County within T9S, R10E-13E; T10S, R11E-13E; and T11S, R12E-13E, MDB&M, as shown on the attached map.

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This is the same expanded place of use for the transfer of up to 5,000 AF per year authorized in the Order.

**Proposed User:**

San Luis Canal Company  
John Wiersma, General Manager  
11704 W. Henry Miller Road  
Dos Palos, CA 93620  
Phone: (209) 826-5112  
Email: [JWiersma@hmrdrd.net](mailto:JWiersma@hmrdrd.net)

**General Information**

*The amount of water to be transferred or exchanged would have been consumptively used or stored in the absence of the proposed temporary change or long-term transfer.*

The proposed long-term transfer from SWD/ESCC to SLCC consists of up to 5,000 AF of water that SWD/ESCC are authorized to divert from Bear Creek under License 5940. The quantity of water proposed for transfer is within the amount of water authorized for use under License 5940 and has been made available by conservation projects completed in 2011, and described in the Order approving the existing long-term transfer program. In the absence of the proposed transfer, the up to 5,000 AF of water would be used for irrigation within SWD/ESCC.

*Analysis of any changes to streamflow, water quality, timing of diversion or use, return flows, or effects on legal users from the proposed temporary change or long-term transfer.*

There are no other legal users of the water that SWD/ESCC are entitled to divert and use under License 5940. The transfer would occur under the same conditions as the existing transfer program, with no change to the location or timing of diversion or use or return flows, and no effect on any legal users. All water diverted into the East Side Canal is consumptively used, and SWD manages its irrigation system so that there are no agricultural return flows.

*Analysis that shows the proposed temporary change or long-term transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.*

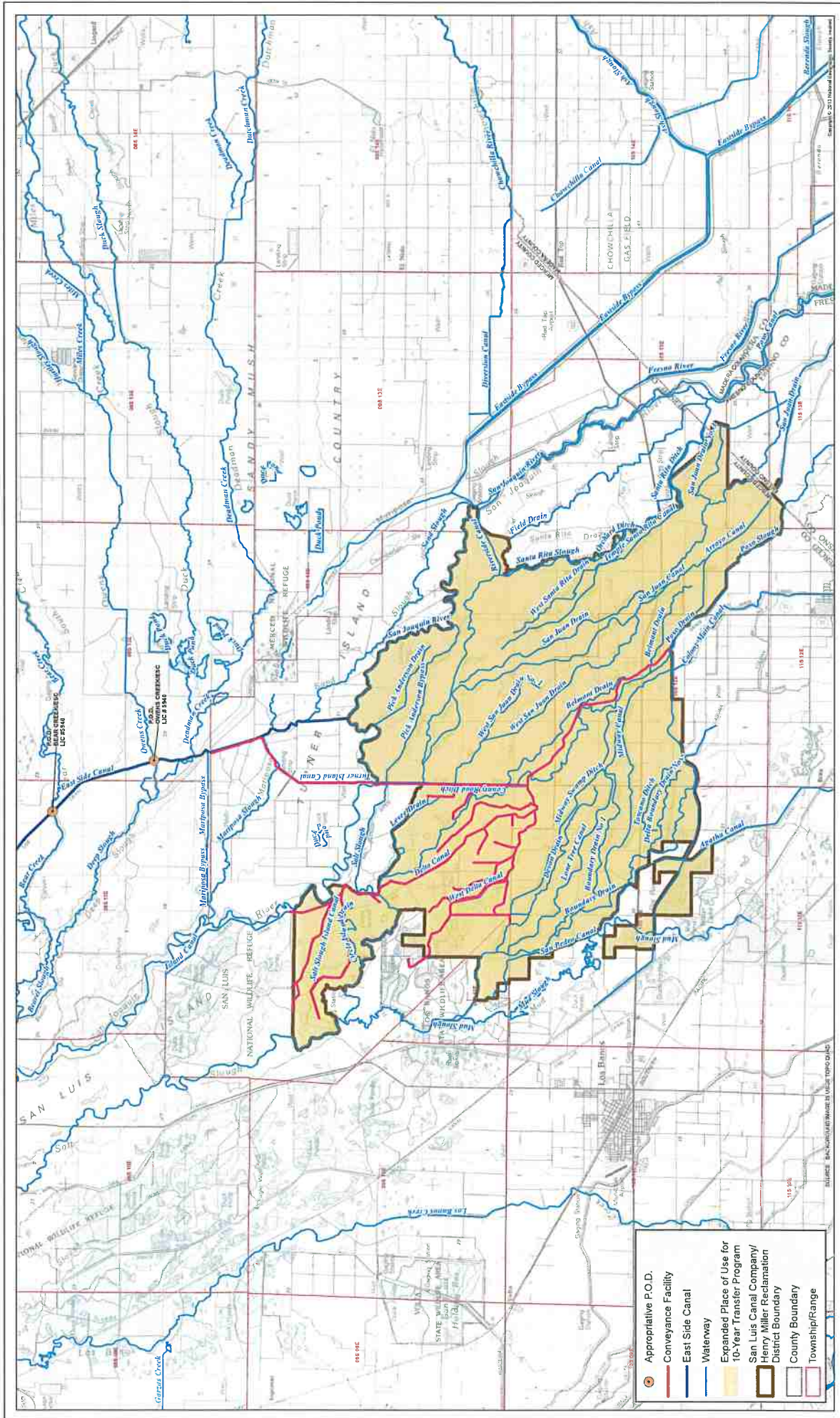
The transfer water has been made available through previously implemented conservation projects and would be diverted and conveyed through existing facilities for continued irrigation of agricultural lands. No lands would be converted to agricultural use, or fallowed, because of the transfer. No construction is required to implement or will occur as a result of the Transfer Program.

An initial study/mitigated negative declaration was prepared for the existing transfer program which identified no potential adverse environmental effects from the transfer of up to 5,000 AF annually to SLCC for 10 years. The only potentially significant environmental



effects were associated with construction of then-proposed conveyance facilities, which have been completed, with all required mitigation fully implemented. If approved the Petition would continue the conditions that have existed for the past 10 years.

Because the transfer will not change physical conditions in Bear Creek, or within the existing or proposed place of use, the Transfer Program will not unreasonably affect fish, wildlife, or other instream beneficial uses.



- Appropriate P.O.D.
- Conveyance Facility
- East Side Canal
- Waterway
- Expanded Place of Use for 10-Year Transfer Program
- San Luis Canal Company/Henry Miller Reclamation District Boundary
- County Boundary
- Township/Range







Merced County, California  
Stevenson Water District

SWDIESCC 10-YEAR TRANSFER PROGRAM  
MARCH 2021  
DRAFT

FIGURE

State of California  
State Water Resources Control Board  
**DIVISION OF WATER RIGHTS**  
P.O. Box 2000, Sacramento, CA 95812-2000  
Tel: (916) 341-5300 Fax: (916) 341-5400  
<http://www.waterboards.ca.gov/waterrights>

## ENVIRONMENTAL INFORMATION FOR PETITIONS

This form is required for all 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.

### DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition for 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.

Stevenson Water District (SWD) and East Side Canal & Irrigation Company (ESCC) (SWD and ESCC collectively referred to as "Petitioners") propose to continue to transfer up to 5,000 acre-feet annually under water right License 5940 to San Luis Canal Company (SLCC), using the same point of diversion and same conveyance facilities, for irrigation use in the same expanded place of use (Transfer Program). Consistent with transfers that have occurred since 2012, water will be diverted from Bear Creek into the East Side Canal, the main conveyance facility for SWD, at the existing point of diversion under License 5940. There will be no increase or change in diversion timing, amount or use. Once diverted into the East Side Canal, the water will be conveyed to the proposed expanded place of use through existing conveyance facilities. Under the Transfer Program these transfers would continue through December 31, 2031.

Absent the proposed extension of the existing transfer program to SLCC for use within its service area, this water would be consumptively used within the existing service area of the SWD and/or the historic service area of the ESCC. The transfer water has been made available through previously implemented conservation projects and would be diverted and conveyed through existing facilities for continued irrigation of agricultural lands. No lands would be converted to agricultural use, or fallowed, because of the transfer. No construction is required to implement or will occur as a result of the Transfer Program.

A copy of Petitioners' request for consultation to the California Department of Fish and Wildlife, CEQA Notice of Exemption, and supporting documentation are included as Attachment 1.

Insert the attachment number here, if applicable: 1

**Coordination with Regional Water Quality Control Board**

For change petitions only, you must request consultation with the Regional Water Quality Control Board regarding the potential effects of your proposed change on water quality and other instream beneficial uses. (Cal. Code Regs., tit. 23, § 794.) In order to determine the appropriate office for consultation, see: [http://www.waterboards.ca.gov/waterboards\\_map.shtml](http://www.waterboards.ca.gov/waterboards_map.shtml). Provide the date you submitted your request for consultation here, then provide the following information.

Date of Request

04/09/2021

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

Will a waste discharge permit be required for the project?

Yes  No

If necessary, provide additional information below:

Insert the attachment number here, if applicable:

**Local Permits**

For temporary transfers only, you must contact the board of supervisors for the county(ies) both for where you currently store or use water and where you propose to transfer the water. (Wat. Code § 1726.) Provide the date you submitted your request for consultation here.

Date of Contact

For change petitions only, you should contact your local planning or public works department and provide the information below.

Person Contacted: N/A

Date of Contact:

Department:

Phone Number:

County Zoning Designation:

Are any county permits required for your project? If yes, indicate type below.

Yes  No

Grading Permit

Use Permit

Watercourse

Obstruction Permit

Change of Zoning

General Plan Change

Other (explain below)

If applicable, have you obtained any of the permits listed above? If yes, provide copies.

Yes  No

If necessary, provide additional information below:

N/A

Insert the attachment number here, if applicable:

**Federal and State Permits**

Check any additional agencies that may require permits or other approvals for your project:

- Regional Water Quality Control Board     Department of Fish and Game
- Dept of Water Resources, Division of Safety of Dams     California Coastal Commission
- State Reclamation Board     U.S. Army Corps of Engineers     U.S. Forest Service
- Bureau of Land Management     Federal Energy Regulatory Commission
- Natural Resources Conservation Service

Have you obtained any of the permits listed above? If yes, provide copies.     Yes     No

For each agency from which a permit is required, provide the following information:

| Agency | Permit Type | Person(s) Contacted | Contact Date | Phone Number |
|--------|-------------|---------------------|--------------|--------------|
| N/A    |             |                     |              |              |

If necessary, provide additional information below:

Insert the attachment number here, if applicable:

**Construction or Grading Activity**

Does the project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed, bank or riparian habitat of any stream or lake?     Yes     No

If necessary, provide additional information below:

Insert the attachment number here, if applicable:

**Archeology**

Has an archeological report been prepared for this project? If yes, provide a copy.  Yes  No

Will another public agency be preparing an archeological report?  Yes  No

Do you know of any archeological or historic sites in the area? If yes, explain below.  Yes  No

If necessary, provide additional information below:

Insert the attachment number here, if applicable:

**Photographs**

For all petitions other than time extensions, attach complete sets of color photographs, clearly dated and labeled, showing the vegetation that exists at the following three locations:

- Along the stream channel immediately downstream from each point of diversion
- Along the stream channel immediately upstream from each point of diversion
- At the place where water subject to this water right will be used

**Maps**

For all petitions other than time extensions, attach maps labeled in accordance with the regulations showing all applicable features, both present and proposed, including but not limited to: point of diversion, point of rediversion, distribution of storage reservoirs, point of discharge of treated wastewater, place of use, and location of instream flow dedication reach. (Cal. Code Regs., tit. 23, §§ 715 et seq., 794.)

Pursuant to California Code of Regulations, title 23, section 794, petitions for change submitted without maps may not be accepted.

**All Water Right Holders Must Sign This Form:**

I (we) hereby certify that the statements I (we) have furnished above and in the attachments are complete to the best of my (our) ability and that the facts, statements, and information presented are true and correct to the best of my (our) knowledge. Dated 04/12/2021 at Sacramento, California

*Kelley M. Lake*  
\_\_\_\_\_  
Water Right Holder or Authorized Agent Signature

\_\_\_\_\_  
Water Right Holder or Authorized Agent Signature

**NOTE:**

- Petitions for Change may not be accepted unless you include proof that a copy of the petition was served on the Department of Fish and Game. (Cal. Code Regs., tit. 23, § 794.)
- Petitions for Temporary Transfer may not be accepted unless you include proof that a copy of the petition was served on the Department of Fish and Game and the board of supervisors for the county(ies) where you currently store or use water and the county(ies) where you propose to transfer the water. (Wat. Code § 1726.)





**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

April 9, 2021

Ms. Linda Connolly  
Supervisor  
California Department of Fish and Wildlife, Region 4  
1234 E. Shaw Avenue  
Fresno, CA 93710  
Email: [Linda.connolly@wildlife.ca.gov](mailto:Linda.connolly@wildlife.ca.gov)

Re: Request for Consultation: Long Term Water Transfer (Wat. Code, § 1735; Cal. Code Regs., tit. 23, §784) (License 5940) (Application 5724)

Dear Ms. Connolly:

On behalf of the Stevinson Water District (SWD) and East Side Canal & Irrigation Company (ESCC) (SWC and ESCC collectively referred to as “Petitioners”), I am requesting consultation on Petitioners’ proposed long term transfer of surface water to the San Luis Canal Company (SLCC).

**Proposed Transfer**

Petitioners together hold water rights under License 5940 (Application 5724) to divert from Bear Creek and Owens Creek. The water proposed for transfer has been made available by conservation projects implemented in 2011. Pursuant to a 2012 Order of the State Water Resources Control Board (State Water Board) approving a change petition for long-term water transfer to temporarily add the SLCC service area to the place of use to License 5940 (Order) (attached)<sup>1</sup>, Petitioners have transferred 5,000 acre-feet (AF) per year to SLCC, and the conserved water has been used for irrigation within SLCC’s service area. The change in place of use of License 5940 authorized by the Order expires January 1, 2022.

Petitioners and SLCC desire to continue transfers as authorized under the Order. Petitioners therefore are filing a Petition for Long-Term Transfer Under Water Code Section 1735 (Petition) to continue to transfer up to 5,000 acre-feet (AF) annually under License 5940 to SLCC, using the same point of diversion and same conveyance facilities, for irrigation use in the same expanded place of use (Transfer Program). Consistent with the Order,

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<sup>1</sup> Corrected Order in the Matter of License 5940 (Application 5724) Petition for Long-Term Transfer Involving up to 5,000 Acre-Feet of Water Per Year from East Side Canal & Irrigation Company and Stevinson Water District to San Luis Canal Company (Feb. 8, 2012) (Order).

Ms. Linda Connolly, California Department of Fish and Wildlife  
Re: Request for Consultation: Long Term Water Transfer  
April 9, 2021  
Page 2

water will be diverted from Bear Creek into the East Side Canal, the main conveyance facility for SWD, at the existing point of diversion under License 5940. Once diverted into the East Side Canal, the water will be conveyed to the proposed expanded place of use through existing conveyance facilities. Under the proposed Transfer Program these transfers would continue through December 31, 2031.

Absent the proposed extension of the existing transfer program to SLCC for use within its service area, this water would be consumptively used within the existing service area of the SWD and/or the historic service area of the ESCC.

One of the purposes of the existing transfer program, which will be achieved under the proposed Transfer Program, is to improve water quality within the northwesterly portion of the SLCC. The surface water that will be provided under the Transfer Program is of higher quality than other water supplies available to SLCC and will provide water quality benefits within SLCC, thus assisting in achievement of sustainable groundwater management within SLCC.

SWD has evaluated the Transfer Program and its potential to result in adverse environmental effects and determined that the Transfer Program is exempt from the California Environmental Quality Act. A copy of the Notice of Exemption (NOE) filed by SWD for the Transfer Program and analysis supporting the NOE is attached.

The following information is provided pursuant to regulations governing petitions for change.

#### **Information Required Under Title 23, Section 794 of the California Code of Regulations**

*The amount(s) of water which would have been diverted, consumptively used, or stored under the water right in the absence of the proposed change(s), (a) during the period for which the change is requested, or (b) in a maximum year if the change is permanent:*

Petitioners together hold rights to divert water under License 5940 (Application 5724). Water supplies under this license originate from Bear Creek and Owens Creek. The water proposed for transfer has been made available by conservation projects implemented in 2011. Pursuant to the State Water Board Order, since 2012, Petitioners have transferred 5,000 AF annually to SLCC (except for 2014 and 2015), and the conserved water has been used for irrigation within SLCC's service area.

Under the proposed Transfer Program these transfers would continue without change through 2031, or the maximum period authorized by the SWRCB. Absent the proposed extension of the existing transfer program to SLCC for use within its service area, this water would be consumptively used within the existing service area of SWD and/or the historic service area of the ESCC.



Ms. Linda Connolly, California Department of Fish and Wildlife  
Re: Request for Consultation: Long Term Water Transfer  
April 9, 2021  
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*The amount(s) of water proposed for change, transfer, or exchange.*

Up to 5,000 acre-feet per year (AFY).

*The existing and the proposed purpose(s) of use of water.*

The existing and proposed purpose of use of the water is irrigation. Variations in regional surface water quality have adversely impacted the SLCC water supplies delivered through the Central Valley Project (CVP). The proposed transfer would improve water quality in the northwesterly region of SLCC, and assist with attainment of groundwater sustainability, by providing a higher quality substitute water supply for irrigation of existing agricultural lands.

*The existing and the proposed point(s) of diversion and rediversion, and the existing and proposed location(s) of any return flow.*

The existing and proposed points of diversion are the points of diversion authorized under License 5940. Waters diverted under License 5940 are diverted into the East Side Canal (constructed in the late 1800s). All water diverted into the East Side Canal is consumptively used, and SWD manages its irrigation system so that there are no agricultural return flows.

*The existing and the proposed place(s) of use of the water for various purposes of use.*

The place of use under License 5940 is the historic service area of the SWD and ESCC, totaling 18,347 acres within Township 6, 7, and 8 south, Ranges 9 and 10 east. The petition would temporarily expand the place of use to include the SLCC service area, which is located within the Henry Miller Reclamation District No. 2131 (HMRD 2131). See attached map. HMRD 2131 owns and operates the irrigation conveyance facilities that will deliver the transferred water.

*The existing and the proposed diversion, release and return flow schedules if stored water is involved or if the streamflow regime will be changed.*

Not applicable. No changes in streamflow will occur.

*Any changes in property ownership(s) involved, and the point(s) of diversion and place(s) of use of other known users of water who may be affected by the proposed change(s).*

No changes in property ownership will occur. Currently, water is diverted from the various sources, including Bear Creek, into the East Side Canal. Under the proposed Transfer Program, water will continue to be diverted at the same point of diversion at the East Side Canal. As this water is normally diverted from Bear Creek, and there are no return flows, there will be no change in timing of diversion or use, or water quality, that would affect other users of water.

Ms. Linda Connolly, California Department of Fish and Wildlife  
Re: Request for Consultation: Long Term Water Transfer  
April 9, 2021  
Page 4

*Information identifying any effects of the proposed change(s) on fish, wildlife, and other instream beneficial uses.*

The proposed transfer will have no effect on fish, wildlife, or other instream beneficial uses. Currently water is diverted from the various sources, including Bear Creek, into the East Side Canal. Under the proposed transfer, water will continue to be diverted at the same point of diversion at the East Side Canal. Water for transfer has been made available by conservation projects implemented in 2012 and relied on for transfers identical to the proposed Transfer Program since 2012. The conservation projects are described in the attached Order approving the existing transfer program.

Transferred water will continue to be applied on irrigated agricultural land within SLCC. No construction is required or will occur as a result of the Transfer Program. No land will be converted to agricultural use or taken out of production as a result of the Transfer Program. No physical changes to land or streams will occur as a result of the Transfer Program. As this water is normally diverted from Bear Creek, and there are no return flows, there will be no change in timing of diversion or use, or water quality, that would affect fish, wildlife, or other instream beneficial uses.

*Information identifying any effects of the proposed change(s) on other known users of water, including identification in quantitative terms of any projected change in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the streams affected by the proposed change(s).*

There will be no effect on other known users of water. Currently water is diverted from the various sources authorized under License 5940, including Bear Creek, into the East Side Canal. Under the proposed transfer, water will continue to be diverted at the same point of diversion at the East Side Canal, in the same amounts and at the same times as authorized under License 5940 and as have occurred under the current long-term transfer program approved in 2012. As this water is normally diverted from Bear Creek, and there are no return flows, there will be no change in timing of diversion or use, or water quality, or reduction in availability of water in any stream, and thus no other users of water will be affected.

*The parties involved in the proposed change, transfer, or exchange.*

Stevinson Water District  
Betty Hurley Lindeman  
General Manager  
P.O. Box 818  
Newman, CA 95360  
Phone: (209) 668-3282  
Email: [blindeman@stevinsonwd.org](mailto:blindeman@stevinsonwd.org)

Ms. Linda Connolly, California Department of Fish and Wildlife  
Re: Request for Consultation: Long Term Water Transfer  
April 9, 2021  
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East Side Canal & Irrigation Company  
Robert Kelley, Jr.  
P.O. Box 818  
Newman, CA 95360  
Phone: (209) 634-4908  
Email: [rdk@jjsranch.com](mailto:rdk@jjsranch.com)

San Luis Canal Company  
John Wiersma, General Manager  
11704 W. Henry Miller Road  
Dos Palos, CA 93620  
Phone: (209) 826-5112  
Email: [JWiersma@hmr.net](mailto:JWiersma@hmr.net)

*Map(s) prepared in accordance with Article 7 which describe the proposed change(s) and show the hydrologic basin of origin and the streams which could be affected by the proposed change(s).*

See attached.

If you have questions about the proposed transfer, please contact me at [ktaber@somachlaw.com](mailto:ktaber@somachlaw.com) or (916) 212-2862. Thank you.

Sincerely,

Kelley M. Taber

Enclosures: Corrected Order in the Matter of License 5940 (February 8, 2012)  
Notice of Exemption  
Analysis Supporting Exemption  
Map

cc: Betty Hurley Lindeman, General Manager, Stevinson Water District  
Robert Kelley, East Side Canal & Irrigation Company  
John Wiersma, General Manager, San Luis Canal Company

KMT:mb

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

DIVISION OF WATER RIGHTS

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CORRECTED ORDER  
IN THE MATTER OF LICENSE 5940 (APPLICATION 5724)  
PETITION FOR LONG-TERM TRANSFER  
INVOLVING UP TO 5,000 ACRE-FEET OF WATER PER YEAR  
FROM  
EAST SIDE CANAL & IRRIGATION COMPANY AND STEVINSON WATER DISTRICT  
TO SAN LUIS CANAL COMPANY

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SOURCE: Bear Creek tributary to San Joaquin River

COUNTY: Merced

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**1.0 SUBSTANCE OF PETITION**

On March 16, 2011,

Stevinson Water District and  
East Side Canal & Irrigation Company  
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 Long-Term Transfer under Water Code Section 1735, et seq. Pursuant to the petition, the Stevinson Water District (Stevinson) and the East Side Canal & Irrigation Company (collectively Petitioners) seek to transfer up to 5,000 acre-feet (af) of water to the San Luis Canal Company (SLCC) under water right License 5940 (Application 5724). The long-term transfer will be effective through December 31, 2021.

**1.1 Description of the Transfer.** The Petitioners propose to transfer up to 5,000 af of water under water right License 5940 to SLCC. Water will be diverted from Bear Creek into the East Side Canal, the main conveyance facility for Stevinson. Once diverted into the East Side Canal, the water will be conveyed to the proposed place of use through new conveyance facilities constructed as part of the Eastside Conveyance Project.

The Petitioners currently deliver water to the Merquin County Water District (Merquin), which is within the place of use of License 5940. 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 SLCC 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 combined

reduction) (Highline No. 1 and Rice Field laterals); Field ID's 52, 53, 54, 55, 56, 64 (300 af combined reduction) (Turner Slough, Pump No. 1 and No. 2); Field ID's 16, 17, 18, 25 (200 af combined 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 SLCC 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 SLCC under the transfer.

## 2.0 BACKGROUND

**2.1 Substance of License 5940.** License 5940 was issued on February 9, 1960 pursuant to Application 5724, for direct diversion of 163 cubic feet per second (cfs) from Bear Creek and Owens Creek combined. There are two points of diversion under the license, one on Bear Creek and one on Owens Creek. 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.

**2.2 Proposed Temporary Changes.** The proposed transfer would temporarily add the SLCC as a place of use under License 5940. SLCC is a private mutual water company that holds historic water rights from the San Joaquin River system. From its inception until 2000, SLCC provided water to its shareholders, and was also responsible for providing its facilities with operations and maintenance services. In 2000 Henry Miller Reclamation District No. 2131 (HMRD) was formed to work with SLCC to better manage the day-to-day functions of delivering water and providing drainage within the boundaries of SLCC. HMRD now either owns or has acquired easements on all water delivery infrastructures within SLCC boundaries. HMRD also operates and maintains all such facilities to ensure delivery of SLCC contract water to all its shareholders/water users. Therefore, the temporary addition in place of use requested with this petition is the service area of SLCC.

## 3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

The State Water Board issued public notice of the transfer on August 3, 2011 and received an August 3, 2011 comment letter via email from the California Fisheries and Water Unlimited (CFWU) and a September 6, 2011 comment letter from the U.S. Bureau of Reclamation (Reclamation).

CFWU objected to the proposed transfer due to the potential environmental impacts to the Sacramento-San Joaquin Bay Delta (Delta). The CFWU comment letter does not identify any impacts specifically associated with the transfer. It states that the transfer shouldn't be approved until the Delta estuary is fixed and losses to salmon, steelhead and other fish species have been mitigated at the state and federal pumps. The comment letter also states that the transfer is unreasonable. A statement of facts specifically related to impacts associated with the transfer was not provided. On September 14, 2011, Stevinson responded that the proposed transfer will not involve moving water through the Delta and that absent this transfer the water will still be consumptively used on lands on the east side of the San Joaquin Valley. Consequently, regardless of approval of the transfer, Stevinson asserts that there will be no environmental impact on the Delta and the transfer will result in continued reasonable, beneficial use of water. Therefore, CFWU's protest is hereby rejected.

Reclamation indicated its concern that Central Valley Project (CVP) water rights and operations remain protected from injury by the proposed long-term transfer. In order to determine whether the transfer could impact Reclamation's CVP rights and operations, Reclamation requested that the order approving the transfer include a condition requiring documentation of Stevinson's reduced deliveries within its licensed place of use as described in the petition to allow for the transfer. This Order includes a term requiring Stevinson to monitor and report information documenting Stevinson's reduced deliveries in compliance with limitations in this Order.

#### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

HMRD acted as Lead Agency under the provisions of CEQA and completed a Mitigated Negative Declaration (MND) for the Eastside Conveyance Project and filed a Notice of Determination (NOD) with the Office of Planning and Research on December 27, 2010. The MND included mitigation measures to alleviate the concerns relative to construction of the project. No significant adverse effects on the environment are identified in the MND. The State Water Board is a responsible agency for purposes of considering whether to approve the transfer petition that will allow HMRD to proceed with the proposed project. As a responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board has considered the MND in deciding whether to approve the petition. The State Water Board will issue an NOD within five days of the date of this Order.

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 [189 Cal.Rptr. 346].) There is no evidence that approval of the transfer petition, with the CEQA lead agency's mitigation measures from the MND to minimize impacts to biological resources will have any adverse impacts on public trust resources.

#### **5.0 REQUIRED FINDINGS OF FACT**

##### **5.1 Would Not Result in Substantial Injury to Any Legal User of Water**

Before approving a petition for long-term transfer, 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 not result in substantial injury to any legal user of water (Wat. Code: §1736.) The quantity of water intended for transfer under the proposed long-term transfer is within the amount authorized for diversion under License 5940. Additionally, no protest based on injury to any legal user of water remains outstanding.

In light of the above, I find in accordance with Water Code section 1736 that the proposed transfer will not result in substantial injury to any legal user of the water.

**5.2 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses.** Before approving a petition for long-term transfer, 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 not unreasonably affect fish, wildlife, or other instream beneficial uses (Wat. Code, § 1736.) Pursuant to CEQA, HMRD has prepared and certified an MND addressing potential impacts of the proposed long-term transfer. The MND does not identify any significant adverse impacts from the proposed transfer.

In light of the above, I find in accordance with Water Code section 1736 that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

#### **6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY**

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for long-term transfers if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.3 of Resolution 2007-0057.

#### **7.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1736, and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed long-term transfer will not result in substantial injury to any legal user of the water.
2. The proposed long-term transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

#### ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed by Petitioners for long-term transfer under License 5940 to facilitate the delivery of up to 5,000 af of water per year to SLCC is approved.

All existing terms and conditions of License 5940 remain in effect, except as amended by the following provisions:

1. The long-term transfer is effective from the date of this Order through December 31, 2021.
2. The maximum amount of water that may be delivered to SLCC pursuant to this Order is 5,000 af of water per water year. The transfer in combination with all other diversions pursuant to License 5940, shall not exceed a rate of 163 cfs from all sources combined. The transfer is further limited to the quantities made available annually as a result of water conservation.
3. For the purposes of the transfer of up to 5,000 af of water per year, the place of use of License 5940 is expanded to include the boundaries of the San Luis Canal Company as detailed in the legal description in the "Property Transfer Documentation" filed with the State Water Board.
4. On January 1, 2022, the change in place of use of License 5940 shall automatically expire, and the water subject to the change shall revert to its Licensees without any action by the State Water Board.
5. No later than January 30 of each calendar year covered by this Order, Stevinson shall provide the Deputy Director for Water Rights a report describing the water transferred as authorized by this Order during the preceding year. The report shall include the following information:
  - a. The total quantity of water (in af) delivered to SLCC during the preceding year.
  - b. Documentation that Merquin received 4,000 af (or whatever lesser amount was transferred under this Order that year) less water under its contract during the one-year period covered by the report than its baseline contract supply of 18,211 af.
  - c. Documentation that the Stevinson service areas received 1,000 af (or whatever lesser amount was transferred under this Order that year) less water during the one-year period covered by the report than from historic deliveries that preceded the conservation improvements.
6. The first 5,000 af of any water conservation credit claimed by Licensee has been applied to this transfer. The conservation credit shall not be applied to any other project during the transfer period.
7. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this long-term transfer Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

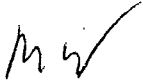
The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

8. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this long-term transfer, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the long-term transfer authorized under this Order.

(0000014)

9. I reserve jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: **FEB 08 2012**



# Notice of Exemption

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

From: (Public Agency) Stevinson Water District  
P.O. Box 818  
Newman, CA 95360

(Address)

County Clerk / County of Merced

FILED  
2021 MAR 17 AM 10:43  
BY: [Signature]  
COUNTY CLERK

Project Title: Long Term Water Transfer Program

Project Applicant N/A

Project Location - Specific: See attached map. Generally, Township 9S, Ranges 10E, 11E, 12E and 13E; Township 10S, Ranges, 11E, 12E and 13E; Township 11S, Ranges 12E and 13E, MDBM.

Project Location - City: N/A

Project Location - County: Merced

Description of Nature, Purpose and Beneficiaries of Project: The project is a 10-year program to transfer up to 5,000 acre feet per year of surface water, made available by previously implemented conservation projects, to San Luis Canal Company (SLCC) for irrigation use within the SLCC service area.

Name of Public Agency Approving Project:

Stevinson Water District

Name of Person or Agency Carrying Out Project:

Stevinson Water District/East Side Canal & Irrigation Company/San Luis Canal Company

Exempt Status: (check one)

Ministerial (Sec. 21080(b)(1); 15268);

Declared Emergency (Sec. 21080(b)(3); 15269(a));

Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

Categorical Exemption. State type and section number:

Sections 15301 (Existing Facilities); 15304 (Minor Alterations of Land); 15061(b)(3) (General).

Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

Stevinson Water District (SWD) and East Side Canal & Irrigation Company (ESCC) will transfer up to 5,000 acre feet per year of surface water, via the East Side Canal, and diverted from Bear Creek, Owens Creek, and other drains and tributaries to San Luis Canal Company for irrigation use within the SLCC service area, under appropriate water rights held by SWD and ESCC (License 5940). The water will be made available for transfer pursuant to previously implemented conservation projects. The project will use existing diversion and conveyance facilities, for ongoing irrigation of agricultural lands and water quality improvement within SLCC, with no new construction or change in land use.

Lead Agency

Contact Person:

Betty Hurley Lindeman

Area Code/Telephone/Extension:

(209) 668-3282

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project:

Yes

No

Signature: Betty H Lindeman

Date: 3/17/2021

Title: General Manager

Signed by Lead Agency

Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21108, 21152, and 21152.1, Public Resources Code.

Date received for filing at OPR: \_\_\_\_\_

**10 Year Water Transfer Program**  
**Evaluation of Environmental Effects**  
**Pursuant to California Environmental Quality Act**  
**April 9, 2021**

Stevinson Water District (SWD) as the lead agency under the California Environmental Quality Act (CEQA) is proposing to approve a 10-year water transfer program (Proposed Project). This document documents the basis for the SWD's determination that the Proposed Project is exempt from CEQA.

**Project Background**

SWD and East Side Canal & Irrigation Company (ESCC) jointly hold certain State-issued appropriative water rights (licenses) to divert surface water into the East Side Canal from Bear Creek, Owens Creek and other drains and tributaries<sup>1</sup>, as well as pre-1914 water rights and decreed water rights. License 5940 authorizes SWD and ESCC to divert water for irrigation in their service areas within Merced County. In 2012, the State Water Resources Control Board (SWRCB) approved a petition for long-term transfer of water authorizing a temporary change in the place of use for License 5940 to enable SWD and ESCC to transfer up to 5,000 acre feet (AF) per year of surface water made available by conservation projects to the San Luis Canal Company (SLCC), for irrigation use within the SLCC service area, which is also in Merced County (Existing Transfer Program).<sup>2</sup> In most years since 2012, SWD and ESCC have delivered 5,000 AF of transfer water to SLCC under the Existing Transfer Program.

Under the Existing Transfer Program, transfer water has been diverted from the existing authorized point of diversion on Bear Creek under License 5940<sup>3</sup>, into the East Side Canal. The transfer water was made available through conservation projects described in the SWRCB Order. The transfer water has been delivered by gravity and through an existing siphon under the Eastside Bypass to a canal owned by Turner Island Farms, and then to a connection with SLCC facilities. SLCC uses the transferred water for agricultural purposes, to improve water quality, within its boundaries. SLCC has transferred an equivalent amount of federal Central Valley Project (CVP) water it is entitled to receive pursuant to its contract with the United States Bureau of Reclamation (Reclamation) to another CVP contract holder within Merced County, the Panoche Water District (PWD). SLCC's transfers of CVP water

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<sup>1</sup> License No. 5940 (Application No. 5724); License No. 5941 (Application No. 6111), and License No. 6222 (Application No. 7012).

<sup>2</sup> Corrected Order in the Matter of License 5940 (Application 5724) Petition for Long-Term Transfer Involving up to 5,000 Acre-Feet of Water Per Year from East Side Canal & Irrigation Company and Stevenson Water District to San Luis Canal Company (Feb. 8, 2012) (Order).

<sup>3</sup> License 5940 authorizes direct diversion of 163 cubic feet per second from Bear Creek and Owens Creek combined, at two points of diversion, one on Bear Creek and one on Owens Creek.

are a separate project subject to approval by Reclamation; SWD has no discretionary approval authority over any aspect of SLCC's CVP water transfers.

The potential environmental impacts of the Existing Transfer Program were evaluated under both CEQA and the National Environmental Policy Act (NEPA). In June 2011, Reclamation issued a Finding of No Significant Impact (FONSI) for its actions associated with construction and operation of the proposed Eastside Conveyance Project, which included facilities for conservation and delivery of transfer water. The FONSI was supported by analysis in Environmental Assessment/Initial Study (EA/IS)-10-021 prepared by Reclamation as the lead federal agency and Henry Miller Reclamation District No. 2131 (HMRD 2131) as the lead state agency to satisfy the requirements of both NEPA and CEQA, respectively (Reclamation 2011).

EA/IS-10-021 analyzed two-way water transfers between SWD, ESCC, SLCC, and PWD. The first part of the transfer involved SWD and ESCC annually providing up to 5,000 AF of their water rights water subject to approval from the SWRCB to SLCC. The second part of the two-way transfer required Reclamation's approval for SLCC to annually transfer up to 5,000AF of its CVP water to PWD. Most of the water was to be moved through existing conveyance infrastructure but required the construction of two conveyance facilities: the 5.6-mile Turner Island Canal and 2.5-mile County Road Ditch.

EA/IS-10-021 addressed impacts of the Proposed Project on the following resources: aesthetics, agricultural resources, air quality, biological resources, cultural resources, environmental justice, geology and soils, global climate, hazards and hazardous materials, hydrology and water quality, Indian Sacred Sites, Indian Trust Assets, land use and planning, mineral resources, noise, population and housing, public services, recreation, socioeconomics, transportation/traffic, and utilities and service systems. Reclamation determined there would be no significant impacts to any of the resources and issued the FONSI on July 7, 2011 (FONSI/EA/IS-10-021). FONSI/EA/IS-10-021 is hereby incorporated by reference. HMRD 2131 adopted a Mitigated Negative Declaration (MND) pursuant to CEQA; the only potentially significant impacts identified, and the only mitigation measures required, were for potentially significant impacts from construction of the conveyance and conservation facilities. No potentially significant impacts were identified for the water two-way transfer.

The conveyance facilities for the Existing Transfer Program were completed by 2012 and all required mitigation was implemented. Water transfers between SWD, ESCC, and SLCC were initiated in 2012 following construction being completed, and continue through December 31, 2021. In the fall of 2020 Reclamation completed a draft EA/IS for a renewed long-term transfer program that includes the same 5,000 AF per year transfer of conserved water from SWD/ESCC to SLCC; it also considers CVP transfers from SLCC to PWD and other parties. Like FONSI/EA/IS-10-021, the 2020 draft EA/IS also identifies no significant impacts associated with the Proposed Project.

### **Proposed Project**

The Existing Transfer Program expires December 31, 2021. SWD and ESCC seek to continue to transfer conserved water to SLCC for an additional 10 years, or for so long as the

SWRCB authorizes. The Proposed Project will continue the Existing Transfer Program without change. Subject to approval by the SWRCB of a long-term water transfer petition (Petition) authorizing an expanded place of use under License 5940, SWD and ESCC will transfer to SLCC up to 5,000 AF per year of water made available through previously implemented conservation projects<sup>4</sup> (Transfer Water). Consistent with transfers under the previously approved long-term transfer petition for the Existing Transfer Program, Transfer Water will be used by SLCC for irrigation within its service area, to improve water quality. Transfers may occur between March 1 and November 1 of each year, commencing in 2022 and running through December 2031, as adjusted based on the term and timing of a SWRCB order approving the Petition.

Transfers will occur pursuant to single or multi-year transfer agreements to be negotiated among the parties during the term authorized by the SWRCB. It is anticipated that SLCC will continue to transfer an equivalent amount of its CVP water to PWD and other authorized CVP contractors, subject to approval by Reclamation and compliance with CEQA by any state agencies. Potential transfers of CVP water by SLCC are subject to approval by SLCC, Reclamation, and other parties, speculative, outside of the control of SWD, and will be evaluated separately under CEQA and NEPA. Any such transfers are not a necessary consequence of the Proposed Project, as they are not required or presumed by the Proposed Project, and the Proposed Project has independent utility (improving water quality conditions within SLCC) and can be implemented by SLCC without any CVP water transfers.

### **CEQA Analysis**

All aspects of the Proposed Project within SWD's discretionary approval authority (the annual transfer to SLCC of up to 5,000 AF of water made available by conservation) remain the same as those under the Existing Transfer Program. The Proposed Project will use only existing facilities and will continue water transfers of the same source, amount, and delivery period as has occurred since 2012, without change. Since the approval of the Existing Transfer Program and associated change petition, there have been no changes in the physical conditions in the Proposed Project area that have the potential to result in significant impacts. Because there are no changes, the CEQA documentation and applicable determinations made in support of the Existing Transfer Program remain valid for the Proposed Project.

SWD has considered the Proposed Project and determined that it is covered by certain CEQA categorical exemptions including, but not limited to:

### **California Code of Regulations, Title 14,<sup>5</sup> Section 15301 (Existing Facilities)**

This Class 1 exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities,

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<sup>4</sup> A total of 6,161 AF of conserved water was made available by piping canals within SWD and Merquin County Water District.

<sup>5</sup> All further statutory references are to sections of Title 14 of the California Code of Regulations unless otherwise indicated.

mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The CEQA Guidelines<sup>6</sup> list types of “existing facilities” that are included within the exemption that are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use.

The Proposed Project will use existing diversion and conveyance facilities and mechanical equipment, for ongoing irrigation of agricultural lands and water quality improvement within SLCC, with no new construction or change in land use. The Proposed Project will continue the transfer of conserved water in the same amounts, timing, and terms and using the same facilities as the Existing Transfer Program.

#### **Section 15304 (Minor Alterations of Land) (Class 4)**

This exemption consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. The Proposed Project will result in the continued transfer of up to 5,000 AF a year of water through existing facilities for use on existing agricultural land. No trees will be removed, and any physical changes to the environment would be consistent with ongoing agricultural practices. No land will be converted to agricultural use as a result of the Proposed Project.

#### **Section 15061, subd. (b)(3) (General)**

CEQA Guidelines section 15061, subdivision (b)(3), provides that a project is exempt from CEQA if, among other things,

The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

CEQA and NEPA documentation prepared for the Existing Transfer Program, and subsequent evaluation by Reclamation pursuant to NEPA and SWD under CEQA, confirm that the Proposed Project has no potential to result in a significant impact. Any impacts associated with the Existing Transfer Program were due to construction of facilities that have been completed. No potential significant impacts were identified for the transfer of up to 5,000 AF per year of water under the Existing Transfer Program. Moreover, independent analysis by Reclamation demonstrates that potential CVP water transfers by SLCC will not have any adverse environmental impact. For these reasons, it can be seen with certainty that the Proposed Project will not result in a significant effect on the environment, and it is exempt from CEQA.

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<sup>6</sup> Section 15000 et seq.

## Exceptions to Categorical Exemptions

CEQA Guidelines section 15300, subdivision (2), identifies the following limited exceptions to the categorical exemptions:

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The Proposed Project is not located in a sensitive environment. Water will be diverted and transferred through existing facilities in an agricultural area, with no construction or tree removal. Because the Proposed Project will not change existing conditions or result in any adverse effects, it does not have the potential to result in cumulative impacts. No scenic highways, hazardous waste sites, or historical resources will be affected by the Proposed Project.

SWD received two comment letters from a private party (Greenhouse Ranch (Greenhouse), which is engaged in litigation with SWD and ESCC over unrelated issues) that the Proposed Project has the potential to result in adverse effects to geology and soils, groundwater sustainability, sensitive species, and recreation. In its second comment letter, received the afternoon of the hearing on the Proposed Project, Greenhouse cites three documents, or sets of documents, that it asserts demonstrate there is a possibility that the Proposed Project would have a significant effect on the environment, and thus would not qualify for any CEQA exemption. SWD has evaluated the Greenhouse comments, including the cited documents, and determined that these comments are without merit. The comments are addressed as follows:

*Documents Cited in Greenhouse Letter of March 9, 2021*

In its March 9, 2021 letter, Greenhouse cites generally to comments submitted on the Existing Transfer Program and associated FONSI/EA/IS-10-021, and other general public comments made by SWD and ESCC representatives unrelated to the Existing Transfer Program or Proposed Project. Greenhouse does not explain how those comments relate to the Proposed Project. Reclamation, HRMD 2131, and the SWRCB considered the comments on FONSI/EA/IS-10-021 and determined that the Existing Transfer Program would not have a significant impact on the environment related to the transfer and use of the 5,000 AF of transfer water. The only potentially significant impacts identified in the EA/IS/MND related to construction of facilities that were completed nearly a decade ago. No construction is proposed as part of the Proposed Project. The EA/IS/MND resolved any possible question in the comments about whether the transfer of 5,000 AF per year of water to SLCC could possibly result in a significant impact to the environment, with substantial evidence and analysis. These comments on the prior EA/IS/MND do not constitute substantial evidence that the Proposed Project may have a significant impact on the environment, and they provide no basis for determining that the Proposed Project does not qualify for applicable CEQA exemptions.

Greenhouse also cites to December 2016 testimony by Robert Kelley on behalf of SWD to the SWRCB in a hearing on the proposed Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary. The testimony raised concerns about the potential effect on agriculture, and groundwater resources, from the SWRCB’s proposal to require instream flows at 40-50 percent of the unimpaired flow, which has the potential to result in reduced surface water deliveries for irrigation, and associated challenges in complying with the Sustainable Groundwater Management Act (SGMA), through increased pumping, reduced recharge or other means. The comments were made in 2016, five years after implementation of the water conservation projects that enabled water to be made available for transfer under the Existing Transfer Program, and after the Existing Transfer Program was commenced/implemented. Those projects were existing at the time, and are part of the existing conditions against which the Proposed Project’s potential to result in significant impacts is assessed. The Proposed Project would continue existing conditions and not reduce the amount of surface water applied in SWD/ESCC compared to existing conditions. Moreover, the 5,000 AF that is transferred is inconsequential in the context of the more than 3 million AF per year water budget for the Merced Subbasin. (See Merced Subbasin Groundwater Sustainability Plan, November 2019

[http://mercedsgma.org/assets/pdf/gsp-sections/Merced-Subbasin-GSP-no-appendices\\_2019-11-12.pdf](http://mercedsgma.org/assets/pdf/gsp-sections/Merced-Subbasin-GSP-no-appendices_2019-11-12.pdf).) The Existing Transfer Program has been in place for 10 years and no lands have been fallowed in SWD/ESCC as a result, and there is no evidence that groundwater levels have declined, or other adverse effects related to groundwater sustainability, have occurred as a result of the annual transfer of 5,000 AF of conserved water.

Finally, Greenhouse cites to a 2014 letter by counsel to SWD expressing concerns about a federal Warrant Act contract for conveyance and storage of groundwater. The project that is the subject of the 2014 comment letter has no relationship to the Proposed Project, which would not involve groundwater pumping, conveyance, or storage and Greenhouse makes no attempt to explain how the comments on an entirely different project are evidence of a significant impact of the Proposed Project.

### *Geology & Soils*

Greenhouse expressed concern that the Proposed Project may result in impacts to geology and soils, and specifically “landslides, soil erosion and levee breaches” from water running through the East Side Canal. The Proposed Project will have no impact on East Side Canal banks. East Side Canal banks wash out from flood overflows in Merced streams (Bear and Owens Creeks) that run from the Greenhouse property into the East Side Canal, as documented by video evidence. The Proposed Project will continue existing flows consistent with ongoing operations, which include the Existing Transfer Program, without change, and as such will have no impact related to soil erosion or levee breaches.

### *Groundwater Sustainability*

Greenhouse expressed concern that the Proposed Project would reduce the amount of surface water within the Merced Subbasin that is available to displace groundwater overdraft and thereby potentially impede sustainable groundwater management of the subbasin, and result in degraded water quality levels. Greenhouse also argues that the Proposed Project would result in significant impacts to groundwater due to the transfer of water “across subbasins,” and cites comments made by SWD and ESCC representatives, and comments by third parties on the EA/IS/MND for the Existing Transfer Program.

SWD is a member of the Merced Subbasin Groundwater Sustainability Agency (MSGSA), responsible for ensuring sustainable groundwater management and compliance with the SGMA, including preparation of the Merced Subbasin Groundwater Sustainability Plan (GSP). The Proposed Project will not change existing conditions related to surface water use, groundwater use or replenishment, or groundwater water quality within the Merced Subbasin. The groundwater basin in the area of SWD has not shown any decline in groundwater levels, or increase in groundwater pumping, as a result of the Existing Transfer Program. The surface water that will be transferred has been made available due to conservation projects described in the SWRCB Order approving the Existing Transfer Program and would not impact overall water supply availability or affect groundwater conditions. The Proposed Project does not have the potential to conflict with or obstruct implementation of the Merced Subbasin GSP. SLCC would continue receiving irrigation



water of improved water quality compared to its CVP water supply, which would contribute to sustainable groundwater management within the Delta Mendota Subbasin.

### *Sensitive Species*

Greenhouse expressed concern about potential noise impacts and associated impacts to habitat for waterfowl and other species based on its assumption that the Proposed Project would require electrification of pumps to operate siphons under the Eastside Bypass. No electrification of pumps is required or necessary for the Proposed Project. Operation of existing facilities will continue with no change, and there will be no noise impacts.

Greenhouse also expressed concern that the Proposed Project might adversely affect San Joaquin kit fox, California tiger salamander, and long-horned fairy shrimp by altering flows through the East Side Canal. Reclamation evaluated the Proposed Project's potential to impact sensitive species and substantial evidence supports a finding that the Proposed Project would have no effect on sensitive species. First, none of the identified species are affected by flows in the East Side Canal. Flows through the canal are an existing condition, and the Proposed Project would not change that condition. Second, none of the identified species are present in or around the East Side Canal, and the Proposed Project would not change existing land uses, nor would it affect areas outside the canal within wildlife refuges. To the extent that San Joaquin kit foxes can use some agricultural lands in the Proposed Project area, the Proposed Project would not change their ability to do so. There would be no effect on California tiger salamander, or any invertebrates, including long-horned fairy shrimp, because there are no vernal pools or other suitable seasonal wetlands present in the area affected by the Proposed Project.

There would be no construction associated with the Proposed Project, and lands that have never been tilled or that have been fallowed and untilled for three or more years would not receive water. Therefore, the Proposed Project has no potential to adversely affect listed or other sensitive species.

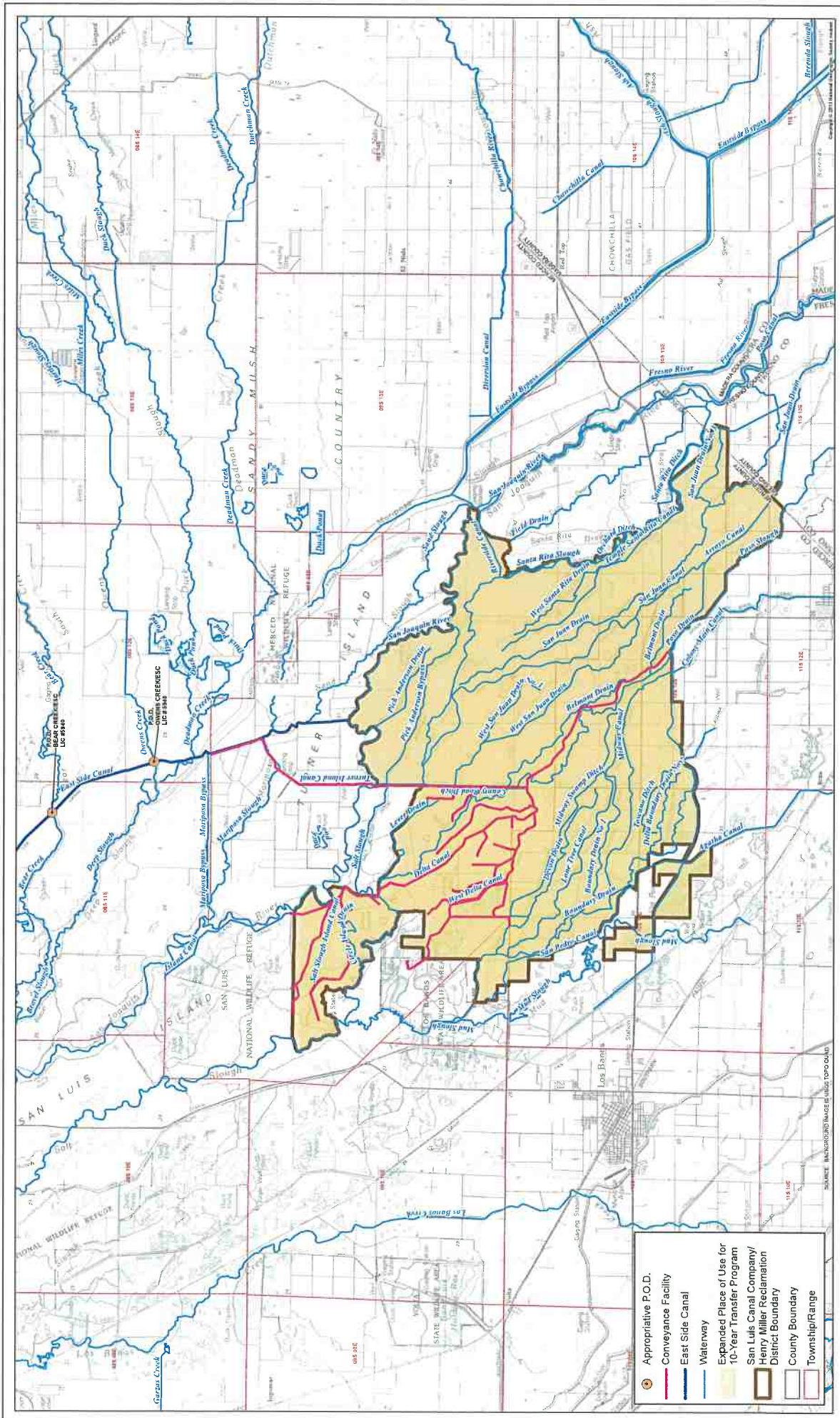
### *Recreation*

Greenhouse expressed concern that water conveyance under the Proposed Project "will increase the usage of the Eastside Bypass Siphon and thus degrade the use of Greenhouse Ranch Property as a recreation area." As discussed, the Proposed Project represents a continuation of the Existing Transfer Program and will not increase usage of any existing facility, including the East Side Bypass Siphon. Transfer water will remain in the East Side Canal until entering the East Side Bypass Siphon under the East Side Bypass, within the East Side Canal easement. Transfer water will be conveyed to a transfer canal on Turner Island Farms and thereby to SLCC facilities. There will be no effect on any existing use of the East Side Bypass.

### **Conclusion**

The Proposed Project qualifies for at least three CEQA categorical exemptions. Water will be made available for transfer pursuant to previously implemented conservation projects. The Proposed Project will use existing diversion and conveyance facilities, for ongoing

irrigation of agricultural lands and water quality improvement within SLCC, with no new construction or change in land use, with no change from existing conditions, which include the Existing Transfer Program. Substantial evidence demonstrates that the Proposed Project does not have the potential to result in any significant effect (defined under CEQA as a substantial, or potentially substantial, adverse change within the area affected by a project including changes to land, air, water, minerals, plants, wildlife, ambient noise, and objects of historic or aesthetic significance), and there is no reasonable possibility that the Proposed Project will have a significant effect on the environment due to unusual circumstances, as there are no unusual circumstances associated with the Proposed Project. For these reasons, none of the exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2 apply.



- Appropriate P.O.D.
- Conveyance Facility
- East Side Canal
- Waterway
- Expanded Place of Use for 10-Year Transfer Program
- San Luis Canal Company/ Henry Miller Reclamation District Boundary
- County Boundary
- Township/Range

SWDESCC 10-YEAR TRANSFER PROGRAM  
 MARCH 2021  
 DRAFT



Merced County, California  
 Stevenson Water District



FIGURE

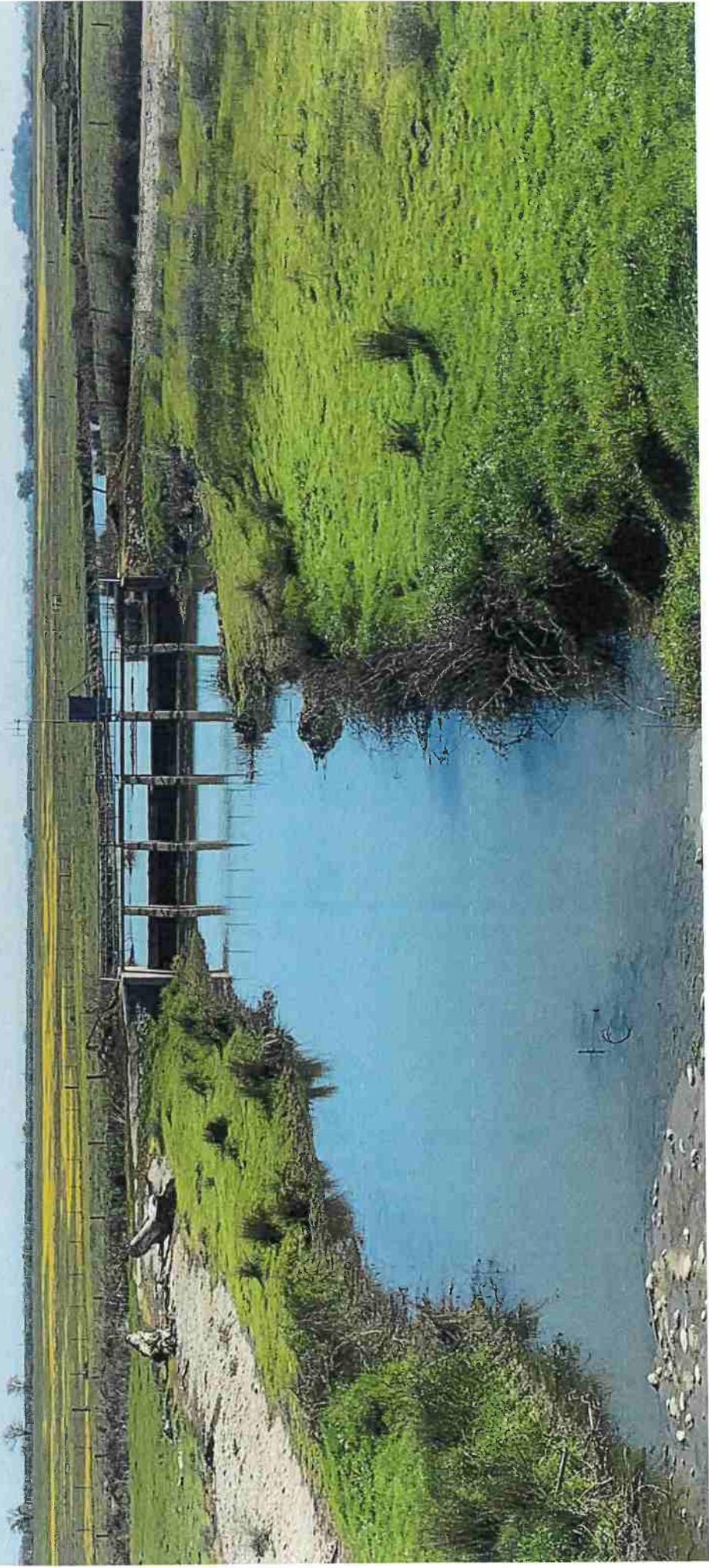


**Stream Channel Immediately Downstream from Point of Diversion, Bear  
Creek: March 16, 2021**



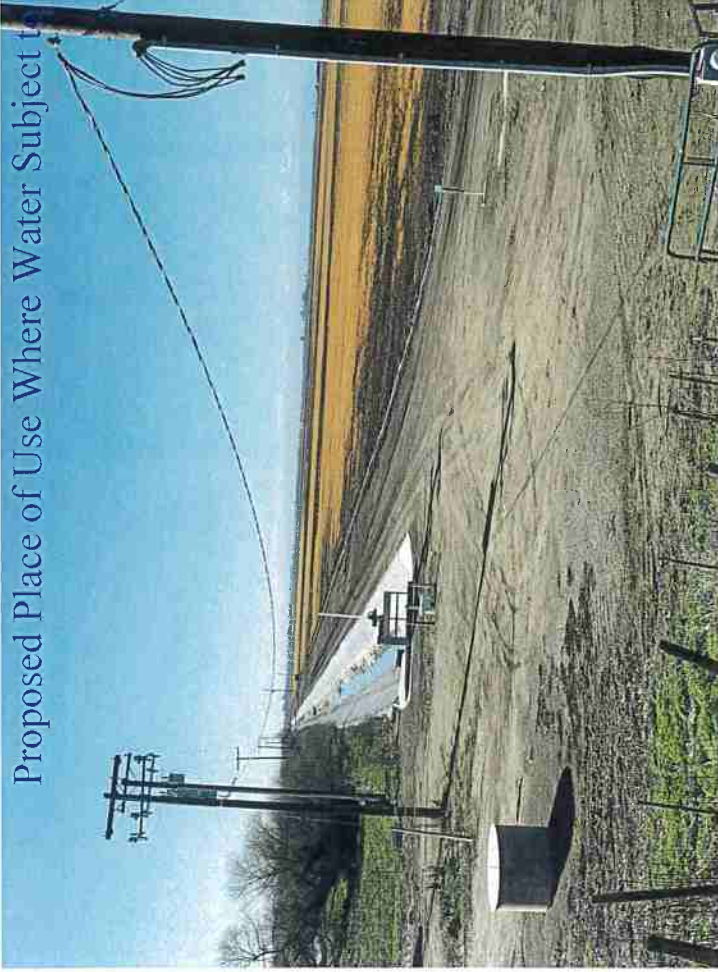


**Stream Channel Immediately Upstream from Point of Diversion, Bear  
Creek: March 16, 2021**





Proposed Place of Use Where Water Subject to



This Water Right Will Be Used: March 16, 2021

