

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24669)	
John and Rowena Y. Rouppet)	Decision: 1547
Applicants)	Source: Badger Creek
United States Bureau of Reclamation, et al)	County: Sacramento
Protestants)	

DECISION DENYING APPLICATION 24669

BY THE BOARD:

John and Rowena Y. Rouppet having filed Application 24669 for a permit to appropriate unappropriated water; protests against the approval of Application 24669 having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for by Section 737 of Title 23, California Administrative Code; investigations having been made by the Board pursuant to said stipulations; the evidence received at the investigation having been considered; the Board finds as follows:

Substance of the Application

1. Application 24669 is for a permit to appropriate 3 cubic feet per second (cfs) from April 1 through October 31 of each year for irrigation purposes from Badger Creek, tributary to Cosumnes River in Sacramento County. The total amount to be diverted is not to exceed 900 acre-feet per annum (afa).

Applicants' Project

2. The applicants flood irrigate about 360 acres of rice and clover. The applicants divert water from an onstream sump in Badger Creek. They also supplement their diversion from Badger Creek with well water. The onstream sump collects the applicants' return flow and any flow in Badger Creek.

Protests

3. The United States Bureau of Reclamation (Bureau), Galt Irrigation District (Galt), and Allen and Margaret Stouffer filed protests against the approval of Application 24669. All protestants alleged interference with prior vested rights.

4. The Bureau alleged that prior Board decisions have established that no unappropriated water exists for the proposed source during the months of July, August, September, and October. The Bureau agreed to dismiss its protest if those months were deleted from the diversion season when hydraulic continuity would exist between the applicants' point of diversion and the Sacramento-San Joaquin Delta in the absence of the applicants' diversion. The Bureau also requested the inclusion in any permit issued on Application 24669 of the permit term regarding conforming the season of diversion to later findings of the Board concerning the availability of unappropriated water. Prior Board decisions have determined that no unappropriated water is available in the Delta during July, August and September. Whether or not water is available in Badger Creek during October has not been previously determined.

5. Protestants Stouffer hold licensed Application 14019 which authorizes the diversion of 0.11 cfs from April 1 to November 15 of each year. Protestants Stouffer flood irrigate about 40 acres of corn and clover. The point of diversion of licensed application 14019 is on Badger Creek about one mile downstream of the applicants' proposed point of diversion.

6. Protestant Galt claims rights to use the creek channel of Badger Creek to convey water purchased from the Bureau and alleges that the approval of Application 24669 would interfere with these rights. However, protestant Galt does not presently serve any water user who diverts from Badger Creek. Accordingly, protestant Galt's protest is without any basis.

Availability of Unappropriated Water

7. Natural flow in Badger Creek exists only during or immediately following periods of heavy rain. While meteorological data indicates that precipitation occurs throughout the year, the principal precipitation occurs during the period from about November 1 of each year to about April 15 of the succeeding year. Thus, the natural flow of Badger Creek is not sufficiently regular during the period from April 16 to about October 31 of each year for direct diversion ^{1/}. While some return flow exists in Badger Creek during the proposed season of diversion, it is necessary to satisfy rights of protestants Stouffer. The Board concludes that there is no unappropriated water available to supply the applicant.

Record in this Matter

8. The records, documents and other data relied upon in determining the matter are Application 24669 and all relevant information on file therewith, particularly the report of field investigation made on October 13, 1976.

Conclusion

9. From the foregoing findings, the Board concludes that Application 24669 should be denied.

^{1/} The applicants appear to be riparian to Badger Creek and could divert the natural flow under the exercise of a riparian right.

ORDER

IT IS HEREBY ORDERED that Application 24669 be denied.

Dated: November 15, 1979

/s/ CARLA BARD
Carla Bard, Chairwoman

/s/ WILLIAM J. MILLER
William J. Miller, Vice Chairman

/s/ L. L. MITCHELL
L. L. Mitchell, Member