

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23443, )  
23444 and 23445 of OCCIDENTAL )  
PETROLEUM LAND AND DEVELOPMENT )  
CORPORATION, to Appropriate from )  
Smithneck Creek and Bear Valley )  
Creek in Sierra County. )

Decision 1391

DECISION APPROVING APPLICATIONS IN PART

Monarch Investment Company having filed Applications 23443, 23444 and 23445 for permits to appropriate unappropriated water; each application having been assigned to Occidental Petroleum Land and Development Corporation; protests having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Applications

1. Applications 23443, 23444 and 23445 are for permits to appropriate 23 acre-feet per annum (afa), 49 afa, and 35 afa, respectively, by storage from December 1 of each year to May 1 of the succeeding year for recreational purposes in three onstream reservoirs in Sierra County. The point of diversion under Application 23443 is on Smithneck Creek within the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of

Section 29, T21N, R16E, MDB&M. The point of diversion under Application 23444 is on Bear Valley Creek within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 29, T21N, R16E, MDB&M. The point of diversion under Application 23445 is also on Bear Valley Creek within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 32, T21N, R16E, MDB&M. Bear Valley Creek is tributary to Smithneck Creek which crosses Sierra Valley by several channels, thence joins Middle Fork Feather River.

#### Applicant's Project

2. The applicant has purchased about 2,700 acres of land located just southeast of Loyalton, and proposes the development of Sierra Brooks, a recreational mountain subdivision of about 1,600 lots. Water for domestic purposes will be pumped from the groundwater basin and is not involved in these applications. The three reservoirs proposed to be constructed under these applications would be used for recreational purposes within the subdivision. The reservoir on Smithneck Creek will be adjacent to the county road and the proposed clubhouse. The two reservoirs on Bear Valley Creek will be within the area to be subdivided, but no waterfront lots will be sold.

#### Protests and Adjudicated Rights

3. A total of nine protests were submitted against approval of these applications. Negotiations resulted in the dismissal of the protest of the Department of Fish and Game. The eight remaining protestants are all entitled to divert water from Smithneck Creek and its several channels as determined by Middle Fork Feather River Adjudication, Superior Court, Plumas County,

Case No. 3095. All five priority classes are represented by protestants, although the majority of protestants' rights are of the second priority. All of protestants' points of diversion are within about four and one-half miles of Loyaltan. All water diversion by protestants has been under the supervision of a Department of Water Resources watermaster since 1940.

4. The irrigation season defined in the decree is from March 15 through September 30, and watermaster service begins in most years as soon as the water supply is insufficient to satisfy all five priority class rights on Smithneck Creek. Use by protestants is primarily for irrigation of meadow crops and pasture on about 2,650 acres, and for stockwatering and domestic purposes. Use by protestants during the winter months is limited to domestic and stockwatering purposes plus a total of 190 acre-feet of storage.

#### Water Supply and Unappropriated Water

5. Applicant and all protestants present at the "in-lieu" proceedings agreed that in all but a very unusual year, the reservoirs would be full and spilling on March 15. The main issue to be resolved is whether the applicant should be required to bypass all inflow after March 15, or be allowed to collect water until as late as May 1, as requested in the applications, either for the purpose of compensating for the small evaporation and seepage losses during that period or to fill the reservoir if not filled prior to March 15. There is usually some precipitation

after March 15, and the average March and April temperature is in the 40°-45° range in Sierra Valley, so that anticipated net evaporation during this period should be very minimal.

6. Streamflow records indicate that water surplus to decreed and other rights is available for storage until April 15, but not after that date, in most years. The availability of water for storage until April 15 is confirmed by the watermaster reports which indicate that watermaster service on Smithneck Creek nearly always begins about April 15 or later.

7. Since these three reservoirs will have a surface area of about 22 acres, and their onstream location could result in impoundment of unauthorized water during the summer months to offset evaporation losses, the applicant should be required to apply for Department of Water Resources watermaster service. The order will so provide. The applicant may desire to convert a part of the adjudicated water right which is appurtenant to the purchased acreage to use to offset reservoir evaporation losses, but that is a matter for a supplemental court decree and is not covered by these applications.

8. Unappropriated water is available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Applications 23443, 23444 and 23445 should be approved in part and that permits should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Applications 23443, 23444 and 23445 and all relevant information on file therewith, particularly the report of field investigation made on June 11, 1971; Department of Water Resources Bulletin 23, "Surface Water Flow" (1956-1962); Department of Water Resources Bulletin 130, "Hydrologic Data Volume II, Northeastern California Surface Water Flow" (1963-1966); Department of Water Resources "Watermaster Service in Northern California Office Report" (1959-1966); Department of Water Resources Bulletin 177, "Watermaster Service in Northern California" (1967-1969); Middle Fork of Feather River Adjudication, Division of Water Resources, "Report on Water Supply and Use of Water on Middle Fork of Feather River and Tributaries", August 1937; and Middle Fork of Feather River Adjudication Judgment and Decree (Case No. 3095), Superior Court, County of Plumas, January 22, 1940.

ORDER

IT IS HEREBY ORDERED that Applications 23443, 23444 and 23445 be, and they are, approved in part, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1a. The water appropriated under Application 23443 shall be limited to the quantity which can be beneficially used and shall not exceed 23 acre-feet per annum by storage to be collected from December 1 of each year to April 15 of the succeeding year.

1b. The water appropriated under Application 23444 shall be limited to the quantity which can be beneficially used and shall not exceed 49 acre-feet per annum by storage to be collected from December 1 of each year to April 15 of the succeeding year.

1c. The water appropriated under Application 23445 shall be limited to the quantity which can be beneficially used and shall not exceed 35 acre-feet per annum by storage to be collected from December 1 of each year to April 15 of the succeeding year.

2. This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

3. After the initial filling of the storage reservoir, and only during the diversion season allowed, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair.

4. The maximum quantity herein stated may be reduced in the license if investigation warrants.

5. Actual construction work shall begin on or before nine months from the date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

6. Said construction work shall be completed on or before December 1, 1974.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1975.

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

9. All rights and privileges under this permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

10. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

12. Permittee shall install and maintain an outlet pipe of adequate capacity in its dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board and the Middle Fork Feather River Watermaster, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

13. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board and the Middle Fork Feather River Watermaster, which is capable of measuring the flow required by condition 14 of this permit. Said measuring device shall be properly maintained.

14. Permittee under Application 23443 shall at all times bypass a minimum of eight cubic feet per second (cfs) from Smithneck Creek or the flow of the stream whenever it is less than eight cfs at the point of diversion to maintain fish life. Permittee under Applications 23444 and 23445 shall at all times bypass a minimum of two cfs from Bear Valley Creek or the flow of the stream whenever it is less than two cfs at the points of diversion to maintain fish life. The provisions of this paragraph are based upon a bilateral agreement between



permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amounts of water named herein are either adequate or required for the maintenance of fish life.

15. Rights under this permit are, and shall be, subject to existing rights defined by the Middle Fork Feather River Adjudication, Superior Court, Plumas County, No. 3095, and such other rights as may presently exist on the stream, insofar as said existing and adjudicated rights are maintained.

16. Permittee shall request the Department of Water Resources to include the rights under this permit in the Middle Fork Feather River watermaster service area and to furnish watermaster service for said rights as provided in Division 2, Part 4 of the Water Code.

17. No water shall be appropriated until the permittee has established a permanent organization which will, to the Board's satisfaction, properly operate and maintain the permittee's reservoir.

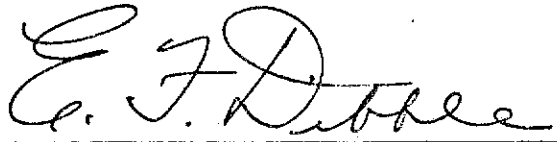
18. Permittee shall accord to the public, for the purpose of fishing, the right of access to the waters impounded by the dam under this permit during the open season for the taking of fish subject to the regulations of the Fish and Game Commission.

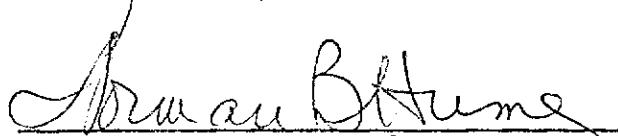
19. In order to prevent degradation of the quality of water during and after construction of the project, permittee

shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: February 3, 1972

  
E. F. Dibble, Acting Chairman

  
Norman B. Hume, Member

  
Ronald B. Robie, Member

  
W. W. Adams, Member