

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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In the Matter of Application 5984 of Bart Sweeney to
Appropriate from Logan Canyon in Nevada County,
Tributary of the South Yuba River, for
Mining Purposes.

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DECISION A. 5984 D-229

Decided *May 28, 1929*

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APPEARANCES AT HEARING HELD April 24, 1929.

For Applicant
Bart Sweeney

E. H. Armstrong

For Protestants
Robert C. Wilson and Anna M. Wilson

No appearance
but present.

EXAMINER: Everett N. Bryan, Deputy Chief for Harold Conkling,
Chief of Division of Water Rights, Department of Public
Works, State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 5984 was filed July 17, 1928, by Bart Sweeney. It pro-
poses an appropriation of ten cubic feet per second from Logan Canyon in Nevada
County, tributary to the South Yuba River, throughout the entire year, for min-
ing purposes in the fractional eastern part of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4,
T 17 N, R 10 E, M.D.B. & M. designated on the map accompanying the application
as the "Morning Glory Placer". The method of using the water is by washing
gravel from drift and by ground sluicing.

The application was protested by Robert C. and Anna M. Wilson.

DESCRIPTION OF PROTEST

Robert C. and Anna M. Wilson claim a right to the use of water from Logan Creek by virtue of continued use when available since prior to 1914; that their point of diversion is at or above that proposed by the applicant and allege in effect that if the application were approved it would deprive them of water to which they are lawfully entitled.

STATEMENT OF COMPLIANCE WITH LEGAL REQUIREMENTS

Application 5984 was completed sufficiently for advertising in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on April 24, 1929, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestants were duly notified.

GENERAL DISCUSSION

It appears from testimony presented at the hearing and information on file with this office that Robert C. and Anna M. Wilson claim a right to the waters of Logan Canyon through the Waukesha ditch which is owned by Mr. S. L. Larsen, and is the only conduit through which water has been diverted from Logan Canyon. Mr. and Mrs. Wilson, however, have not used the water themselves for some time but have leased it to other parties for hydraulic mining purposes.

For a period of about four years from 1919 or 1920 it appears that the right to the use of the water through the Waukesha ditch was leased from Mr. and Mrs. Wilson by C. Landsburg and the fifth year it was used by his son-in-law Mr. Sherwood. During this five year period the water was used for hy-

draulic mining purposes under permit from the California Debris Commission.

From about 1923 or 1924 until about a year ago Mr. Henry Damon has been using the water for similar purposes, but apparently illegally as he had acquired no permit from the California Debris Commission.

The use of water by Messrs. Landsburg and Sherwood was intermittent and apparently desultory. Testimony presented at the hearing indicated that one year Mr. Landsburg used the water for about four months and the other three years he had used it for about three weeks each year; during the remainder of the years the water was going to waste. Mr. Sherwood used the water for about three months during the year he operated the mine.

The use by Mr. Damon was steady and water was used whenever it was available which was about two months each year. This year however he has quit using the water and it is now running to waste.

CONCLUSION

There appears to be some doubt as to whether a water right may be maintained by lease. However, it is not necessary for this office to pass upon the point at this time. The fact remains that protestants do not themselves claim any land upon which to use the water and apparently now have no rental agreement with anyone covering the use thereof and the water is not now being put to any beneficial use whatsoever either by Mr. and Mrs. Wilson or any lessee, nor has it been appropriated by any other party since the passage of the Water Commission Act. The applicant has obtained permission from the owner of Waukesha ditch to use the same as a conduit; the purpose for which the applicant intends to use the water is a beneficial one and therefore it is the opinion of this office that Application 5984 should be approved.

O R D E R

Application 5984 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 5984 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 28 day of May, 1929
1929.

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

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