

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

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In the Matter of Application 5337 of Charles J. Lyser
as Agent for the Spanish Mining Company to Appro-
priate from Devil's Canon Creek a Tributary
of Poorman's Creek in Nevada County for
Power Purposes

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DECISION A 5337 D 173

Decided November 3, 1927

APPEARANCES AT HEARING HELD August 17, 1927

For Applicant:

Charles J. Lyser, agent

John F. Davis

For Protestant:

Frank Dillon

W. E. Wright

EXAMINER: Everett N. Bryan, Deputy Chief for Edward Hyatt, Jr.,
Chief of Division of Water Rights, Department of Public
Works, State of California.

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OPINION

Application 5337 was filed February 1, 1927. It proposes an ap-
propriation of 1.50 cubic feet per second continuous flow throughout the
entire year from Devil's Canon Creek, a tributary of Poorman's Creek in
Nevada County for the development of 128 theoretical horsepower through a
750 foot drop. The power is to be generated on Lot 3 of Section 31, T 18 N,
R 11 E, N.D.P. & M. and is to be used to operate mining and milling machinery.
The water will be returned to the creek from which it is taken for power.
The application was protested by Frank Dillon.

The application was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing at the Court House, Nevada City, California, at 10:30 o'clock A.M. on August 17, 1927. Of this hearing applicant and protestant were duly notified.

The protest of Frank Dillon was filed April 16, 1927. The protestant claims a riparian right to the waters of Devil's Canon and an appropriative right initiated in 1909 for 100 miners inches of water of which amount about 50 miners inches have been utilized.

Protestant alleges in effect that the approval of the application would deprive him of the water to which he is entitled and which is necessary for the purpose of washing gravels and operating an air blast at his mine.

From the testimony presented at the hearing it appears that from 1909 to about 1914 the protestant or his predecessors in interest had diverted about 50 inches of water continuously for washing gravels and operating an air blast at his mine but since that year the use has been desultory and the applicant alleges abandonment.

The testimony was rather conflicting but subsequent to hearing the matter has been amicably adjusted between the two parties and on October 14, 1927 a Quit Claim Deed was executed by the protestant by which the protestant released to the applicant the right to appropriate from Devil's Canon Creek at a point of diversion in Lot 1 of Section 36, T 13 N, R 11 E, M.D.M. & M. by means of a dam, to the capacity of the applicant's ditch or flume as described in Application 2887 and dismissed the protest against the approval of this application.


As the capacity of applicant's proposed diversion works is ample to carry the amount of the appropriation and the use to which the applicant intends to put the water appears to be a useful and beneficial one the application should be approved and a permit issued thereon.

O R D E R

Application 5337 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 said Application 5337 be approved and 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 3d day of November
1927.



(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

WES:ME