

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)
PRELIMINARY DECREE

CLAIMANT: John P. Mitchell

OBJECTOR: United States of America (Bureau of Land Management)

CASE 41E-0193-R-2024

41E 5185-00

NOTICE OF FILING OF MASTER'S REPORT

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

MASTER’S REPORT

The United States of America (Bureau of Land Management) objected to this claim. The March 6, 2024 Court Minutes, Order Entering Default, and Order Setting Filing Deadline entered the default of John P. Mitchell for failure to appear at the scheduling conference. It is noted that the Order Consolidating Case And Setting Scheduling Conference mailed to John P.

Mitchell was returned to the Court as undeliverable. Judicial Assistant Julie Cristiani researched various resources and could not find a different address for Mr. Mitchell.

On August 5, 2024 the United States' Motion For Show Cause Order was filed requesting dismissal of this claim. The Declaration of Melissa Norris is attached to this Motion. On August 12, 2024, while this master was on leave, another master issued an Order Denying Motion For Show Cause Order stating there is no known address for claimant John P. Mitchell so issuing an order setting a show cause deadline would not be received by John P. Mitchell. As noted in that Order, the Declaration of Melissa Norris supports the requested dismissal of this claim. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

“Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. This claim is for a July 25, 1968 use right for 10.00 GPM from Peters Gulch for mining. The claimed pump diversions are in government lot 5 S2SWSW section 1 and government lot 8 W2NWNW section 12, both in T6N, R5W, JEFFERSON. The claimed place of use is the SW section 1, W2NW section 1, and NW section 12, all in T6N, R5W, JEFFERSON.

2. Paragraphs 3 through 6 of the Declaration of Melissa Norris state that the “claimed points of diversion and place of use are located entirely on federal land”; the claimant does not have a special use permit for this federal land; the claimant “does not have authorization from BLM to divert or use water under claim 41E 5185-00”; the BLM’s Mineral and Land Records System “contains information about past and current mining claims authorized for use on

federal land” which shows there are no active mining claims in the claimed place of use, and “there is no evidence of mining within the claimed place of use.”

3. This claim should be dismissed as it does not claim a valid existing water right.

CONCLUSION OF LAW

The Declaration of Melissa Norris is sufficient to contradict and overcome the prima facie claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss claim 41E 5185-00 to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the claim has been dismissed in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

John P. Mitchell
208 W Park
~~Butte, MT 59701~~
(Return mail received)

Service Via Electronic Mail:

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 305-0476
Jennifer.Najjar@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E**

Water Right Number: 41E 5185-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: JOHN P MITCHELL
208 W PARK
BUTTE, MT 59701

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: PETERS GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.