

MONTANA WATER COURT
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM
BASIN (41I)
PRELIMINARY DECREE

CLAIMANTS: Robert R. Green; Karolin L. Martinez

OBJECTOR: United States of America (Bureau of Reclamation)

CASE 41I-1051-R-2025
41I 190593-00

CLOSING ORDER

Claim 41I 190593-00 was included in the Preliminary Decree for the Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim received an objection from the United States Bureau of Reclamation (“BOR”) asserting abandonment. The claim also received the following issue remarks resulting from examination by the Department of Natural Resources and Conservation (“DNRC”):

THE GALLATIN COUNTY WATER RESOURCES SURVEY (1953)
APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPHS NO(S). 179-71, DATED 1979,
APPEARS TO INDICATE 0.00 ACRES IRRIGATED

The BOR appeared at the initial conference, but claimants Robert R. Green and Karolin L. Martinez failed to appear. The Court ordered the BOR to file proposals to resolve their objections. The Court further ordered claimants to file a response to the BOR’s proposed modifications. As ordered, BOR filed information stating it found no indications of irrigation or beneficial use in any of the photographs during the years 2005 through 2023 and no irrigation conveyance facilities or irrigation equipment within the claimed place of use during this time.

When claimants failed to respond to the BOR's proposed modifications, the Court ordered claimants to show cause why claim 41I 190593-00 should not be terminated as abandoned. Claimants did not file any response to the show cause order.

The Court has consistently held that "a long period of continuous nonuse raises the rebuttable presumption of an intention to abandon." *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983); *see also, Smith v. Hope Mining Co.*, 18 Mont. 432, 438, 45 P. 632, 634 (1896) (nine years of nonuse "is certainly very potent evidence, if it stood alone, of an intention to abandon"). Here, the evidence of eighteen years of nonuse is sufficient to create a rebuttable presumption of an intent to abandon. Claimants Robert R. Green and Karolin L. Martinez did not provide evidence to rebut the presumption of abandonment.

Claimants received notice of the BOR's objection, notice of the order consolidating claims and setting status conference, notice of the order setting filing deadline, and notice of the order assuming case and setting show cause deadline. Claimants did not comply with any of the Court's orders and did not provide evidence to show cause why claim 41I 190593-00 should not be terminated as abandoned.

Therefore, it is

ORDERED that the claim be terminated as abandoned.

ORDERED that proceedings in this case are CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Robert R. Green
PO Box 502
Belgrade, MT 59714

Karolin L. Martinez
1311 S Grand Ave
Bozeman, MT 59715

Service Via Electronic Mail:

Michelle Ramus
US Dept of Justice, ENRD-NRS
michelle.ramus@usdoj.gov
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 190593-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: ROBERT R GREEN
PO BOX 502
BELGRADE, MT 59714-0502

KAROLIN L MARTINEZ
1311 S GRAND AVE
BOZEMAN, MT 59715-5607

***Priority Date:**

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF MISSOURI RIVER

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.