

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

FILED
10/21/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41I-0122-R-2024
Lockman, Melissa
11.00

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

* * * * *

CLAIMANTS: Nelson AP Chang; Double G LLC; N & R
Corporation; NR & EJ Limited Partnership

CASE 41I-0122-R-2024
41I 211115-00

OBJECTOR: NR & EJ Limited Partnership

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. If you file an objection, you must serve 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

Claim 41I 211115-00 appeared in the Preliminary Decree for Missouri River above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Nelson AP Chang, Double G LLC, N & R Corporation, and NR & EJ Limited Partnership. Claimant NR & EJ Limited Partnership objected to the claim. The claim also received

issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 41I 211115-00 appeared in the 41I Preliminary Decree as a mining claim that diverts water from Comet Creek for use on several different mining sites in Section 21, T7N, R4W, Jefferson County.

2. The claim received the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

179243-00 211115-00

POINT OF DIVERSION NO. 1 AND NO. 2 APPEAR INCORRECT. THE POINT OF DIVERSION NO. 1 APPEARS TO BE SWNE SEC 21 TWP 7N RGE 4W JEFFERSON COUNTY. THE POINT OF DIVERSION NO. 2 APPEARS TO BE NESW SEC 21 TWP 7N RGE 4W JEFFERSON COUNTY.

THE CLAIMED PERIOD OF USE MAY BE QUESTIONABLE. USE OF THIS WATER MAY NOT BE FEASIBLE DURING WINTER MONTHS.

DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO JULY 1, 1973.

3. NR & EJ Limited Partnership objected to the claim, stating:

Water appropriated pursuant to this historical mining water right has historically been used for mining, watering stock, and other uses on and near the claimed place of use.

4. On May 12, 2025, Nelson AP Chang, N & R Corporation, and NR & EJ Limited Partnership filed a Disclaimer of Interest in claim 41I 211115-00 because the claim has not been used on their historical places of use for a long period of time. (Doc.¹ 8.00).

5. On May 27, 2025, the Court ordered Double G LLC to file a statement either agreeing with Claimants' Nelson AP Chang, N & R Corporation, and NR & EJ Limited Partnership statement that claim 41I 211115-00 has not been used on the historical place of use for a long period of time or providing evidence resolving the issue remarks on claim 41I 211115-00. (Doc. 9.00).

6. On June 3, 2025, Double G LLC filed a statement that it "agrees that the water has not been used on the historical place of use for a long period of time." (Doc. 10.00).

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

facie proof of its content. Mont. Code Ann. § 85-2-227 (2025). This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

2. The Water Court must address all issue remarks that appear on a claim. § 85-2-248, MCA.

3. Existing water rights are subject to the law of abandonment. A long period of non-use raises a rebuttable presumption of abandonment. “Once an appropriator abandons a water right, the right ceases.” *Holmstrom Land Co. v. Meagher Cnty. Newlan Creek Water Dist.*, 185 Mont. 409, 423, 605 P.2d 1060, 1068 (1979). In *Holmstrom* there was at least a 30-year period of non-use, raising the presumption of abandonment.

CONCLUSION OF LAW

1. The abandonment issue remark overcomes the prima facie status of claim 41I 21115-00. Based on the filings by Claimants, the claim has not been used on the historical period of use for a long period of time.

RECOMMENDATION

1. Claim 41I 21115-00 should be dismissed.

A post decree abstract of the water right claim reflecting the recommended dismissal is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA ELECTRONIC MAIL

Hallee C Frandsen

W John Tietz

Browning Kaleczyc Berry & Hoven PC

hallee@bkbh.com

john@bkbh.com

Cassandra@bkbh.com

(atty Chang, N & R Corp., & NR & EJ Limited Part)

SERVICE VIA USPS MAIL

Double G LLC

PO Box 516

Helena, MT 59624

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 211115-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners:

NELSON AP CHANG
PO BOX 782
HELENA, MT 59624-0782

DOUBLE G LLC
PO BOX 516
HELENA, MT 59624-0516

N & R CORPORATION
PO BOX 1715
33 LAST CHANCE GULCH
HELENA, MT 59624

NR & EJ LIMITED PARTNERSHIP
PO BOX 1715
33 LAST CHANCE GULCH
HELENA, MT 59624

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: COMET CREEK

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.