

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

* * * * *

CLAIMANTS: Jessica Flamm; Vincent Flamm

CASE 41I-2073-R-2025
41I 89697-00

CLOSING ORDER

Claim 41I 89697-00, owned by Jessica Flamm and Vincent Flamm was included in the Preliminary Decree for the Missouri River above Holter Dam, Basin 41I, issued on June 24, 2022. The claim is for mining using an Unnamed Tributary of Finn Gulch. It was subject to an issue remark stating the DNRC was unable to confirm any use of the claim for the ten years prior to July 1, 1973.

The issue remark on claim 41I 89697-00 raised the issue of abandonment. Montana operates under a “use it or lose it” abandonment law. Finding a claim is abandoned requires a showing of both nonuse and an intent to abandon. *Heavirland v. State*, 2013 MT 313, ¶ 23, 372 Mont. 300, 311 P.3d 813. A long period of nonuse creates a rebuttable presumption of an intent to abandon a water right. Once a long period of nonuse is shown, the burden shifts to the appropriator to prove a lack of intent to abandon. *In re Claimant: Red Dog Ranch LLC*, 2025 Mont. Water LEXIS at *6. Questions of abandonment may arise from DNRC issue remarks. *Heavirland*, ¶ 6.

Pursuant to Section 85-2-248(2), Mont. Code Ann., the Water Court is required to resolve issue remarks. The Water Court may use information from DNRC, the Statement of Claim and any other data submitted to the Court to resolve issue remarks. § 85-2-227 – 231(2), MCA. The issue remark indicating no use for the ten years prior to July 1, 1973 is sufficient to demonstrate a long period of nonuse.

To resolve the issue remark, the Court required Jessica Flamm and Vincent Flamm to file evidence of use of the claim during the ten years prior to July 1, 1973. (Doc. 1.00).¹ The deadline was extended pursuant to the Flamm's request. (Doc. 2.00). After nothing was filed by the extended deadline, the Water Court set a show cause deadline stating that if nothing was filed by the deadline, the claim would be dismissed. (Doc. 4.00). Nothing was filed by the show cause deadline. No evidence has been filed to show use for the ten years prior to July 1, 1973 or showing a lack of intent to abandon.

Therefore, it is

ORDERED that claim 41I 89697-00 is DISMISSED and proceedings in this case are CLOSED. A post decree abstract is served with this order to confirm the claim has been dismissed in the state water right database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Jessica Flamm
Vincent Flamm
PO Box 8
Jefferson City, MT 59638

¹ As used in this Order, the abbreviation "Doc." refers to the document sequence number in the Court's Full Court Enterprise case management system.

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

Water Right Number: **41I 89697-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: JESSICA FLAMM
 PO BOX 8
 JEFFERSON CITY, MT 59638

 VINCENT FLAMM
 PO BOX 8
 JEFFERSON CITY, MT 59638

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF FINN 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.